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No. 92

THE LIPSIK SOFTWARE PETITIONER

BOARD OF ADVISORY TRIBUNALS OF THE STATE OF
NEW YORK 100

1. NAME OF APPLICANT: ROBERT LIPSIK, COUNTY OF NEW YORK
2. NAME OF ATTORNEY: ROBERT LIPSIK, COUNTY OF NEW YORK

3. DATE OF APPLICANT: 10/26/1998

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 92

RUDOLPH SCHWARE, PETITIONER,

vs.

BOARD OF BAR EXAMINERS OF THE STATE OF
NEW MEXICO

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF NEW MEXICO

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[fol. 1]

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 5847

RUDOLPH SCHWARE, Petitioner

vs.

**BOARD OF BAR EXAMINERS OF THE STATE OF NEW MEXICO,
Respondent**

PETITION TO REVIEW DENIAL OF THE APPLICATION OF RUDOLPH SCHWARE TO TAKE THE BAR EXAMINATION OF THE STATE OF NEW MEXICO—Filed August 25, 1954

Petitioner Rudolph Schwae respectfully applies for an order to review the denial of the application of the Petitioner to take the bar examination of the State of New Mexico in order that he may be entitled to practice law in the State of New Mexico. Jurisdiction is based upon the plenary and inherent power of this Honorable Court to regulate the practice of law and upon the provision of 18-101 of the laws of the State of New Mexico, which creates the Board of Bar Examiners, subject to the approval of this Honorable Court.

The Petitioner sets forth the following facts as the basis of his petition:

[fol. 2] 1. That in December of 1953 your Petitioner filed with the Respondent his application to be permitted to take the bar examination to be held in February, 1954. The application was filed in a form prescribed by the Committee of Bar Examiners.

2. That the Petitioner fully, truthfully and accurately answered each and every question propounded to him in said application.

3. That your applicant fulfilled all the conditions and requirements established for permission to take the bar examination.

4. That your Petitioner was advised that he was entitled to take the bar examination to be held in February, 1954,

and that on appearing at the Supreme Court in Santa Fe, New Mexico on February 22, 1954, he was advised by the members of the Bar Examiners that he was not entitled to take the examination.

5. That your Petitioner at that time was given an informal hearing before the said Board of Examiners, at which time he fully, completely and truthfully answered all questions propounded to him, and at the conclusion of said informal hearing he was again advised that he was not entitled to take the bar examination.

6. That no record was made of what transpired at said informal hearing, nor was your Petitioner ever informed either in writing or verbally as to the basis for the Bar Examiners' refusal to allow him to take said examination.

7. That on May 21, 1954, Petitioner, through his attorney, addressed a letter to the said Bar Examiners asking [fol. 3] that he be given an opportunity to appear personally before the Committee, and that he be furnished with "the reasons and the basis for your reasons holding that he is not entitled to take the bar examination". In the same letter it was requested that he be supplied with the names of any witnesses who may have given information adverse to your Petitioner, and it was further asked that his counsel be allowed to "inspect the records and files dealing with the inquiry into Mr. Schware's moral character".

8. On June 16, 1954, a letter was addressed to Petitioner's counsel by Bryan G. Johnson, Chairman of the Board of Bar Examiners, and was advised that a special meeting of the Board of Bar Examiners would be held on July 16, 1954 "for the purpose of hearing any matters that Mr. Schware may desire to present or discuss with the Board". The letter further stated that counsel for Petitioner had the "right to inspect the *public records* in the office of the Clerk of the Supreme Court".

9. That on July 16, 1954, your Petitioner, together with his counsel and witnesses, appeared before said Bar Examiners in the office of Bryan G. Johnson, Chairman of the Board of Bar Examiners, at Albuquerque, New Mexico, and there *was* present the following members of the Board of Bar Examiners: Bryan G. Johnson, L. C. White, Frank

Andrews, Ross L. Malone, Howard F. Houk, W. C. Whatley and Lowell Green, Secretary.

10. At the hearing on July 16, 1954, for the first time, your Petitioner was given the following memorandum, or so-called minutes of the Bar Examiners (T. R. 3):

"No. 1309, Rudolph Schware. It is moved by Board Member Frank Andrews that the application of Rudolph Schware to take the bar examination be denied for the reasons that, taking into consideration the use of aliases by [fol. 4] the applicant, his former connection with subversive organizations, and his record of arrests, he has failed to satisfy the Board as to the requisite moral character for admission to the Bar of New Mexico. Whereupon said motion is duly seconded by Board Member Ross L. Malone, and unanimously passed."

11. At the hearing, counsel for Petitioner was refused the right to examine certain records in the custody of the Board of Bar Examiners (T. R. 7). Counsel for Petitioner was advised that it could not assume that there was nothing adverse in these secret reports. (T. R. 7).

12. That at the hearing on July 16, 1954, the Petitioner testified and produced witnesses and letters of recommendation showing that he was a person of good moral character. A full, true and correct copy of the official reporter's record of the hearing is attached hereto and made a part hereof.

13. That thereafter Petitioner received from Lowell C. Green, Secretary of said Bar Examiners the following extract from the minutes of the Board of Bar Examiners:

"The Board of Bar Examiners of the State of New Mexico convened in a special meeting at 2:30 p. m. on Friday, July 16, 1954, at Room 712 First National Bank Building, in Albuquerque, New Mexico, for the purpose of reconsidering the action taken by the Board of Bar Examiners in refusing permission to Rudolph Schware to take the bar examination at the February, 1954, meeting of the Board; that Rudolph Schware appeared in person and by his attorney P. H. Dunleavy, Esq.; that evidence was produced in behalf of said Rudolph Schware and a stenograph [fol. 5] record was made of said proceedings; at the con-

clusion of the hearing the Board, after due consideration of the evidence introduced, was of the unanimous opinion that the former determination should stand and affirmed its former action on the application of the said Rudolph Schware taken on February 22, 1954."

14. This petition to the Supreme Court is for a review of the decision of the Board of Bar Examiners contained in the minutes in paragraph 13 above.

15. Your Petitioner requests a review of the decision of the Committee of Bar Examiners for the following reasons:

(1) Your Petitioner showed conclusively that he is a person of good moral character, and meets all the other requirements established by law in the State of New Mexico for applicants for admission to the Bar.

(2) That the committee erred in stating that its previous determination should stand, particularly when the basis for such previous determination does not appear in any record.

(3) That no lawful evidence was received or exists supporting the refusal of the application of the Petitioner.

(4) That the committee erred in failing to inform your Petitioner of the names of the witness or witnesses who may have given any adverse reports, and in failing to give Petitioner full access to all records [fol. 6] which were used by the committee as a basis for rejecting his application.

(5) That your Petitioner was not given a reasonable opportunity to either examine or rebut any adverse information that the committee may have had.

(6) That the denial of the application of the Petitioner violates the rights of the Petitioner under the First Amendment to the Constitution of the United States.

(7) That the denial of the application violates the Fifth Amendment to the Constitution of the United States in that it deprives Petitioner of liberty or property without due process of law.

(8) That the denial of the application violates the

Fourteenth Amendment of the Constitution of the United States in that it is an attempt by the State of New Mexico, acting through its Committee of Bar Examiners, to deprive Petitioner of liberty or property without due process of law, and denies Petitioner the equal protection of the laws.

(9) That Sec. 1, Chap. 22, Session Laws of 1949, 18-108 N. M. S. A. Supp. is unconstitutional and void in violation of Sec. 11, Art. 3 and Sec. 1, Art. 6 of the Constitution of the State of New Mexico because it is the delegation of a judicial duty to said Board of Bar Examiners; and for the further reasons that said 1 is vague and indefinite because of its failure to set any standards upon which to examine applicants and [fol. 7] recommend their admission.

(10) That Sec. 1, Chap. 96, Session Laws of 1941, 18-101 is unconstitutional and void because it is vague and indefinite and fails to set any standards to determine qualifications for admission to the Bar.

(11) That Sec. 2, Rule IV, of the Rules Governing Admission to the Bar, adopted January 10, 1945, which provides that no person will be recommended for admission to the Bar unless "he is a person of good moral character" is unconstitutional and void for the reason that is is so vague and indefinite as to be wholly meaningless and incapable to definition; and it fails to set any standards for determining the meaning of "good moral character".

(12) The action of the Board in refusing to recommend Petitioner to take the bar examination was arbitrary and capricious.

Wherefore, your Petitioner prays that this Court enter its order requiring that the Secretary of the Board of Bar Examiners supply to this Court all records, documents, reports and papers in the possession of said Board of Bar Examiners dealing with the application of the Petitioner; and further that the Court enter its order for a review of the denial of Petitioner's application to take the bar examination, and that it be adjudged that the Petitioner should be permitted to take said bar examination and that

counsel for Petitioner should have thirty days in which to file a brief in support of this Petition; and that this Court should enter such other and further relief as may be just [fol. 8] and proper in the premises.

(S.) Rudolph Schware, Petitioner.

The undersigned hereby certifies that a copy of the foregoing pleading was this 25th day of August 1954, mailed to The Attorney General of the State of New Mexico.

(S.) P. H. Dunleavy.

[File endorsement omitted.]

IN SUPREME COURT OF NEW MEXICO

ORDER TO SHOW CAUSE—August 25, 1954

This matter coming on for consideration by the Court upon Petition to Review Denial of the Application of Rudolph Schware to take the Bar Examination of the State of New Mexico, and the Court having considered said Petition and being fully advised,

It is ordered that the Board of Bar Examiners of the State of New Mexico, Respondent herein, appear before this Court on the 24th day of September, 1954, at the hour of 10:00 o'clock a. m., then and there to show cause, if any [fol. 9] there may be, why the prayer contained in said Petition should not be granted.

Dated this 25th day of August, 1954.

(S.) James B. McGhee, Chief Justice of the Supreme Court of the State of New Mexico.

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IN SUPREME COURT OF NEW MEXICO

**Transcript of Special Meeting of the Board of Bar
Examiners**

Held the 16th day of July, 1954, at 715 First National Bank Building, Albuquerque, New Mexico.

Present: Mr. Bryan G. Johnson, presiding, Mr. L. C. White, Mr. Frank Andrews, Mr. Ross L. Malone, Mr. Howard F. Houk, Mr. W. C. Whatley, Mr. Lowell Green.

[fol. 10] **APPEARANCES:**

For Mr. Schware: Mr. Philip H. Dunleavy, Attorney at Law, 217 Sixth SW, Albuquerque, New Mexico.

COLLOQUY BETWEEN EXAMINERS AND COUNSEL

Mr. Johnson: Let the record show that this is a special meeting of the Board of Bar Examiners which is being held at 715 First National Bank Building on this 16th day of July, 1954. The reason for this special meeting is to afford a hearing to Mr. Rudolph Schware concerning his eligibility to take the New Mexico Bar Examination. He is represented here by Philip H. Dunleavy, Attorney at Law, who [fol. 11] under date of May 21, 1954, wrote a letter to the Board of Bar Examiners requesting the opportunity to present matters in behalf of his client to this Board. Under date of June 16, 1954, a letter was sent to Mr. Dunleavy advising him of the special meeting now being held.

Let the record show that in attendance at this meeting are Charles—L. C. White, Frank Andrews, Ross L. Malone, Wayne Whatley, and Bryan G. Johnson, regular members of the Board, and also Mr. Howard Houk, who sat as one of the members of the Bar Examiners at the time Mr. Schware's application was considered.

Also, let the record show that Mr. Lowell Green, Secretary of the Board of Bar Examiners is in attendance at this meeting.

Now Mr. Dunleavy, you have requested this hearing and the Board felt that he should have a special meeting rather than to have Mr. Schware appear at our regular meeting, which would be too late for him to take the Bar Examination in August, if the Board should determine that he is to be permitted to at that time. For your information, the action that was taken with respect to Mr. Schware is contained in the minutes of the meeting of the Board of Bar Examiners and the action shown by these minutes. I will ask the reporter to incorporate into the record here these minutes.

(Minutes Referred to by Mr. Johnson)

"No. 1309, Rudolph Schware. It is moved by Board Member Frank Andrews that the application of Rudolph Schware to take the bar examination be denied for the reason that, taking into consideration the use of aliases by the applicant, his former connection with subversive organizations, and his record of arrests, he has failed to satisfy the Board as to the requisite moral character for admission to the Bar of New Mexico. Whereupon said motion is duly seconded by Board Member Ross L. Malone, and unanimously passed."

Mr. Johnson: You can have it later, Mr. Dunleavy.

Mr. Dunleavy: You want me to proceed?

Mr. Johnson: Yes. Now as far as I am concerned this may be as formal or as informal as you wish. We have no set rules on this and you proceed whatever way you want on it and have questions or anything else.

Mr. Dunleavy: Judge, I would like first of all to—may I assume that you are sitting as Chairman of this Board?

Mr. Johnson: Yes, that is a reasonable assumption to make.

Mr. Dunleavy: I would like to first have introduced into the record the letter which I addressed to the Board on May 25, 1954, and I would specifically at this time like to call the attention to the fifth paragraph of the letter in which it is stated as his attorney, I am asking you at this time to furnish me with the reasons and the basis for your reasons holding that he is a person not entitled to take the Bar Examination. I would appreciate your giving me the

names of any witness or witnesses who may have given you information allowing you to come to the conclusion that you did. Finally, I would appreciate authorization from you to inspect the records and files dealing with your inquiry into Mr. Schware's moral character, taking the three items that are contained in that paragraph.

[fol. 13] This is the first time I have been formally advised as to the basis of the refusal and for the purposes of the record I would like to have it understood that the issues which we must overcome are those dealing with the use of aliases by the applicant. That was the first reason. Second, his former connection with subversive organizations and his records of arrest. Now those I believe are the formal issues which we must overcome. That is, those are the facts upon which you came to the conclusion that he was a person not entitled to take the Bar Examination, is that correct?

Mr. Johnson: They were the motivating circumstances.

Mr. Dunleavy: Yes, sir.

Mr. Malone: I think it should be clear, however, Mr. Chairman, that those aren't issues to be overcome here. There are certain things that the Board wants to be informed on but I don't take it that there are any issues here or any burden of proof. The rules require that an applicant satisfy the Board of his good moral character and that, in the final analysis, is the requirement that every applicant must meet and the basis for this consideration, not particularly those three things. It is correct, however, that those are the three preponderating considerations that were reflected in the Board's action at that time.

Mr. Dunleavy: Now the second point is, I would like to have introduced into the record the letter from Judge Johnson, dated June 16th authorizing me to inspect the records in Santa Fe. The only information I found in there was that information which was furnished by the applicant, Mr. Schware, and if there is any other data you [fol. 14] may have I would appreciate being informed of it and if you have the names of any witnesses, who may have given you adverse reports on the reputation or character of Mr. Schware, I'd be pleased if I could see those.

Mr. Johnson: The only information which we have avail-

able for your inspection is the file which you say that you have already seen. For your information this Board makes an endeavor to learn from whatever confidential sources it may have available the past history and record of the applicants for admission to the Bar.

Mr. Malone: Would you want to state there, Mr. Chairman, that is pursuant to the written consent of the applicant at the time that he filed his application?

Mr. Johnson: Yes. At the time that the applicant applies for admission, he gives a consent that we may make such an investigation. That investigation is of course more complete where a lawyer is involved who has practiced previously in another jurisdiction and comes here and asks for admission. You understand that, because he has his references of his clients and of other members of the Bar from whence he comes and so that investigation is much more complete than one who has never practiced. But in the last few years we have undertaken to make such check as we could within our limited means, even of those who are first applying for admission to law school.

Those records are considered confidential and with the knowledge that we gain from those sources we enable a man, give him the opportunity to meet whatever the situation may be without disclosing the informant and so forth and I don't think we have ever done anything to the detriment of an applicant on the basis of hearsay evidence. There's usually been—whatever was involved, the man would be informed of the general situation and given an opportunity to explain. So that you will understand what I am getting at, for example, in a particular applicant one time we found that he'd made a statement something to the effect that he'd never been arrested and never been in any trouble and our investigation, confidential investigation disclosed that he had. Now we didn't go on that but it gave us something to discuss with him and when he was confronted with it he admitted that it was true. Now something like that happened where a man would deny it or we wouldn't go on the strength of that with a mere report, we'd substantiate it ourselves or either establish that it wasn't true. But I mean that it usually comes to a proposition of final action is taken on what we know and what the man discloses and therefore,

while many of these things that we do gather have to be confidential or we'd never get the information. We only seek it because we have permission to do so. We have to treat it that way.

Mr. Dunleavy: Yes, Judge.

Mr. Johnson: I wanted to give you an idea we are not—at least we hope we are not a Star Chamber outfit even though there are things here which we are telling you that we have looked at and that we have had that we are not going to disclose to anybody.

[fol. 16] Mr. Dunleavy: Of course, I will have to accept your refusal to allow me to examine them.

Mr. Johnson: That is right.

Mr. Dunleavy: And since you are, I presume, refusing to allow me to examine them, I was wondering if you would advise me whether in that report you obtained any information that is derogatory to Mr. Schware.

Mr. Johnson: Well, now I am speaking from memory and I want to be corrected by any member of the Board if I am wrong, I think that anything that involved Mr. Schware have been matters that he's openly and freely disclosed to this Board. Isn't that so?

Mr. Malone: That is my recollection, Mr. Chairman. I wouldn't want the Board to be bound by the statement without checking it but—

Mr. Johnson: I don't think our action was motivated in any way by any accusations or anything was made against him or were disclosed in some way by a report.

Mr. Dunleavy: Can I assume then that there is nothing adverse in that report?

Mr. Malone: No.

Mr. Johnson: Nothing more adverse than what he said.

Mr. Dunleavy: That is like playing charades.

Mr. Johnson: You understand what we are getting at, I think that our action was based on disclosures made by Mr. Schware himself.

[fol. 17] Mr. Dunleavy: I understand quite well. Of course, I accepted the refusal of the Committee to allow me to see all the information upon which they may have based their opinion and I accept as to the matter of principle. I presume then at this point you will want me to proceed.

Mr. Johnson: Yes.

Mr. Dunleavy: Before proceeding with the tender of any proof in this case, I want to point out to the Committee first of all that I have probably as difficult a job as there is to prove because I have to prove that a man is a person of good moral character and the only way you can prove it, I suppose, is to prove that he is a person not of bad moral character. There is no specific accusation so we must use whatever facilities and techniques we can to prove that he is a person of good character. I have to approach it in a rather unorthodox way and one of the first things I have been — leave to do is to introduce in this record, as a result, letters which a husband wrote to his wife while he was in the United States here and while he was in the South Pacific. I do that somewhat over the protest of my clients who know there is something disgraceful about our/reading letters into a public record, the letters that a man may write to his wife but in view of the seriousness of the situation and seriousness of the principles involved, I am going to have to do that and I trust that you realize that this is being done over the protests of my clients and accept my judgment in this matter.

[fol. 18] **Mrs. RUDOLPH SCHWARE**, a witness of lawful age, having first been duly sworn, upon her oath, testified as follows:

Direct examination.

By **Mr. Dunleavy:**

Q. What is your name?

A. Mrs. Rudolph Schware.

Q. Where do you live?

A. 1221 Truman Southeast, Albuquerque.

Q. You are the wife of Rudolph Schware, the applicant, for admission to the Bar Examination?

A. Yes.

Q. When did you marry him?

A. April 13, 1944.

Q. Where did you marry him?

Q. We were married at Camp Polk, Louisiana.

Q. In a civil ceremony?

A. Yes, by a Presbyterian Chaplain.

Q. Were you married again subsequently?

A. Yes, we got married by a Rabbi when he came back from overseas.

Q. During the period of your courtship did Mr. Schware at any time ever influence you in any of your political ideas?

A. No.

Q. Was there ever any discussion of these rights of government?

A. No.

Q. Did you know when you married him that he was a Communist or had been a Communist?

A. No.

Q. When did you first learn that?

A. Well, in the—in corresponding with one another I found out.

[fol. 19] Q. When was he released from military service?

A. I think it was February of '48.

Mr. Schware: '46.

Mr. Dunleavy: You weren't even close. Since that time you have lived together constantly as man and wife?

A. Yes.

A. During that time has he attempted in any way to influence you in your political thinking?

A. No.

Q. Have you ever heard him espouse any idea advocating the overthrow of the government, for example?

A. No.

Q. Do you belong to any political party?

A. No.

Q. You a registered voter?

A. Yes, Democrat.

Q. During the course of your—when he was away did he correspond with you?

A. Yes, constantly.

(Applicant's Exhibit No. 1, marked for identification.)

Q. I show you what has been marked as the Applicant's Exhibit No. 1 and ask you what that is.

A. It is a letter that he sent me from Camp Polk, Louisiana, when I was living in Dallas.

Q. And this is in his handwriting?

A. Yes, sir.

Q. Mrs. Schware, would you be good enough to read this letter.

A. Thursday March 16th—(Witness reads letter.)

Mr. Johnson: (to reporter) You need not take this.

Mr. Dunleavy: In there, Mrs. Schware, what did you mean by the term "traveler"?

[fol. 20] A. Well I had no family, I was raised in an orphan's home and I had nobody to account to and I would work in a city and work there for several years and decide I'd like to see another part of the country and just take off for that part of the country.

Q. You didn't use the term when you'd written to him in any political sense, did you?

A. No.

Q. You were sort of a tourist?

A. At that time.

(Applicant's Exhibit No. 2, marked for identification.)

Q. I show you what has been marked as the Applicant's Exhibit No. 2 and ask you what that is.

A. It is a letter that I received from him when I was still living in Dallas after we were married.

Q. What is the date of the letter?

A. May 1, 1944.

Q. Would you please read the letter—where was he at that time if you remember.

A. I believe he was still at Camp Polk.

Q. Calling your attention to the envelope is the postmark San Francisco, California, does that indicate anything?

A. Well, he was en route then overseas.

Q. Would you please read the letter, Mrs. Schware.

A. May 1—(Witness reads letter.)

(Applicant's Exhibit No. 3, marked for identification.)

Q. I show you what has been marked as Applicant's Exhibit No. 3, and ask you what that is.

A. It is a letter that I received while he was overseas, [fol. 21] dated May 9th.

Q. What year?

A. 1944.

Q. Would you please read that letter.

(Witness reads letter.)

(Applicant's Exhibits Nos. 4, 5, 6, 7, 8, and 9, marked for identification.)

Q. The original of those, now Mrs. Schware, each of those which are marked 4, 5, 6, 7, 8, and 9, are letters that you received from your husband when he was overseas, is that right?

A. Yes, they are.

Q. Since it bothers her to read these I will ask your permission to read them, introduce them into the record.

(Letters read by Mr. Dunleavy.)

I would like to introduce them into the record. That is all. Are there any questions that the Committee would like to ask this woman?

Mr. Johnson: I don't think so.

Mr. White: No.

(Witness excused.)

Mr. Dunleavy: Would you take the stand, please.

RUDOLPH SCHWARZ, a witness of lawful age, having first been duly sworn, upon his oath, testified as follows:

Direct examination.

By Mr. Dunleavy:

Q. What is your name?

A. Rudolph Schwarc.

Q. You are the applicant here for admission to take the Bar Exam?

A. I am.

[fol. 22] Q. These letters that have been read into the record here are letters which you addressed to your wife during the time that you were in the military service?

A. They are—over my protest.

A. In there, for example, in one of the letters you mention the fact that you read to Samson, who was Samson?

A. Well, he was a young kid who was about eighteen or twenty years old and as I recall, I believe he was a Baptist, and he couldn't read very well, but the Bible was his world. Nobody else would read the Bible to him so I did.

Q. And that was a nightly occurrence?

A. That was a nightly occurrence.

Q. And he was a member of the paratroop company that you were in?

A. Yes.

Q. Where were you born?

A. I was born in New York City in 1914, Lower East Side.

Q. What type of neighborhood is that?

A. Well, New York City was—well, it was what we would, like the slum areas today. My father was a needle trades worker and we had six kids in the family and you see, my father never earned too much money and my father was—had been an old Socialist, was a member of the Socialist party, in politics, Socialism and trade unionism was something that was in the family all the time and in the neighborhood wherever we lived. We finally managed to—when the Amalgamated Clothing Workers opened up the cooperative apartments in the Bronx, my father con-[fol. 23] ceived that as a golden opportunity to get the kids out into some fresh air. We were close to parks and of course it was buildings were put up by the Amalgamated Clothing Workers Union and we lived right next door to Sidney Hillman, who was President of the Amalgamated Clothing Workers Union and as a child I was in and out of his house all the time. A question of socialism, of trades unionism was something that we were always, always was being discussed.

Q. Was a part of your life?

A. Yes.

Q. The area in which you lived was an area occupied mostly by immigrants, was it not?

A. In the main.

Q. Are you familiar with the political history and economic history of the United States?

A. To a certain extent.

Q. During the period from approximately 1910 to about 1930, the great dissident forces in the United States were the socialist, were they not?

A. Yes.

Q. The Socialists ideas in the United States came possibly from Europe—was your father an immigrant.

A. Yes, he was.

Q. Was there a constant discussion among these immigrants in the slum area of the validity of these various political ideas such as Socialism?

A. Yes.

Q. And there were large groups belonged to the Socialist party?

A. Quite a number.

Q. And that was the environment in which you grew up; is that correct?

A. That is correct.

[fol. 24] Q. When did you commence work?

A. When I was approximately nine years old.

Q. Were you going to school then?

A. Yes, I was going to school.

Q. What kind of work did you do?

A. So far back, I know I helped a milkman and I used to have to get up about three thirty in the morning and help deliver milk until the route was finished and then go to school. I can remember working in a fruit market delivering orders and working in a store waiting on people, working after school from three thirty to about eleven, working all day Saturdays and Sundays and then I got a job at Columbia University in the Library, which was actually the first decent job I had ever been able to obtain and it was the time of depression and one day or it happened in the period of a few weeks, I was working part time and the part time workers were laid off and people who worked full time took our places.

Q. Between the time that you—were you a graduate of a high school then?

A. Yes.

Q. Between the time that you say you were attending grade school and working part time delivering milk at

three thirty in the morning, was it necessary all during the time that you attended school to continue working in order that the family might exist?

A. Well, if the kids didn't work we couldn't eat, we had to give all our earnings into the—into our mother, very seldom that anything was left for ourselves. It was quite an event when we'd have a nickel or a dime for ourselves. [fol. 25] Q. When did you first join the Communist party?

A. Well, I joined the Young Communist League before I joined the Communist party, that was in 1932.

Q. Will you tell the Committee the circumstances.

A. Well, I was going to High School and a fellow I was playing handball with during school hours when we used to get an hour off told me that he had written a letter to the school newspaper dealing with the question of unemployment in the United States, that the editors of the school paper wanted to publish it but that the faculty adviser refused to allow it to be published and he said that there was a club on the campus which dealt with problems such as that and asked me to attend one of the meetings. Well, I attended one of the meetings of the club and I found out that what he'd told me was true. I thought that freedom of the press was important, I was approximately eighteen years old at the time, and I attended meetings of the club whenever I could, which wasn't too often. The club ran candidates in the school elections. This was just prior to my graduation and they had a—the platform called for lower prices in the school lunch room and stuff like that and our candidates won the election.

It was after the election that the principal called all the members of the club into his office and our faculty adviser and told us that because of the way that the campaign had been conducted that we would have to disband the club. Now I know that right after we won the election they lowered the price of a glass of milk in the school lunch rooms from five cents to three cents and other foods correspondingly.

[fol. 26] There were a number of people who belonged to the club who belonged to various political organizations, the main ones were the Young Peoples Socialist League,

that had about approximately eight or nine members and there were four who belonged to the Young Communist League. To my dying day I will never forget, we were in the principal's office and the principal says, you either—you have to disband the club or else stand suspended. And the leader of the Young Peoples Socialist League got up and he said, "Seeing as how you put it that way, I acquiesce." I never knew what that word meant until I looked it up. He meant to say, "I acquiesce".

There were five people who refused to disband. Four of them were members of the Young Communist League, and myself, I thought it was wrong for the club to have to disband and it set me to thinking—I'd been raised in the socialist atmosphere—why was it when a test came, you've got to realize I was eighteen years at the time—when the test came why was it that the socialists had backed down and the Communists had stood up and I thought and thought and finally my—over the objections of my family—an invitation was given to me to join the Young Communist League and I joined the Young Communist League. It was a few years later that I joined the Communist party.

Q. This idea of joining the Communist League was first of all your own brainstorm, shall we say?

A. Yes.

Q. And none of the other members of your family are members?

[fol. 27] A. No.

Q. And I gather—

Q. Well, it is possible that my father at one time or other had joined the Communist party, I know my sister had.

Q. This was later.

A. Yes, but they have all left.

Q. During the period from 1934 when you say that you joined the Communist party, where did you reside in the United States?

A. Well, I worked in Monticello, New York, in a hotel driving as their chauffeur and then when the work slacked—when the hotel closed down for the summer season, on the way into New York there is a town called Gloversville and had a large Italian population and practically all the

people working in the factory there were Italians and in order to get a job to earn a living I changed my name from a Jewish to an Italian name and kept the same first name and was able to get a job.

Q. Is it a fact that in a community such as that is entirely Italian?

A. Well, I wouldn't say the community was entirely.

Q. I mean a substantial number of those working?

A. Yes.

Q. A Jew would have considerable difficulty in getting appointed—getting work?

A. In those days, yes, sir.

Q. Without being personal or without intending to offend you, but you have a somewhat swarthy complexion and could pass for an Italian?

A. Yes.

[fol. 28] Q. Was that the first time that you ever used an alias?

A. Yes.

Q. Was the sole purpose for that to gain employment?

A. Yes.

Q. Did you have any intention to deceive your employer in any way?

A. No.

Q. You did it then solely to earn a living?

A. Yes.

Q. And you rendered the work?

A. That is correct.

Q. Regardless of what name you used?

A. That is right.

Q. Did you ever again use the—what name did you use there, if you remember?

A. Rudy DiCaprio.

Q. After you left Gb-versville, did you continue to use that name?

A. Yes, I subsequently went to California looking for work and finally got a job in the shipyards in San Pedro, California, and I used the name Rudy DiCaprio there, too.

Q. Why did you use the name in the shipyard?

A. The same reason, I don't know of any and I never did find any Jewish person who is working in the shipyard.

Q. Was the use of the name solely to obtain employment?

A. Yes.

Q. Was there any intention to deceive anyone?

A. No.

Q. Did you obtain any financial benefit in the use of that name?

[fol. 29] A. Not other than being able to work and earn a living to a certain extent.

Q. Did you ever on any other occasion use an alias?

A. Yes, a number of times, I believe it was two. I have tried to check with the Los Angeles Police Department and made a trip to California purposely to get the information, because the information was refused to be supplied to me by mail, to find out how many times I'd been arrested in San Pedro, California. I know definitely that I was arrested twice and this was in the course of a strike and while I was in San Pedro I went through the files of the San Pedro Newspaper and found that there were approximately two to 3,000 people arrested in the course of about 66 days, approximately, over 200 on a charge of suspicion of criminal syndicalism.

(Discussion off the record.)

Q. You were speaking about the arrest of approximately two or 3,000 people during the strikes at San Pedro, California, were you arrested at that time?

A. Yes, I—to the best—

Q. First let's stay with the name, what name were you working under in the shipyard?

A. Rudy DiCaprio.

Q. And how many times were you arrested during the course of that strike?

A. To the best of my knowledge and belief twice.

Q. At that time it was—

A. Criminal syndicalism.

Q. Is that a state or federal?

A. State.

[fol. 30] Q. What is criminal syndicalism, if you know?

A. Well, there is a statute which defines criminal syndicalism as a person—as the commission of an act in which

somebody attempts to overthrow or subvert the state government, essentially that is what it is.

Q. Were you ever tried on this charge?

A. No, I was never tried on the charge.

Q. Were the charges dismissed?

A. I assume so, I was never brought before a judge, I was kept in jail, I remember one time 72 hours and then released and the second time I remember I was in jail approximately five days and read in the paper on the 3rd day that I'd been released but that I was still in jail but I'd never been brought before a judge and was released.

Q. And now sticking with the use of names, you have testified that you used the name of DiCaprio at Gloversville, New York, and at San Pedro, did you use any other alias at any time up until 1940?

A. Well, as I said, when I was arrested I used the alias of Joe Fiori.

Q. Was that in connection with employment or just a name that you assumed to give to the police?

A. A name that I assumed to give to the police, I suppose, it is a long time ago, I suppose I thought, well, if the company knew that I'd been arrested it was possible that I wouldn't be able to go back to work.

[fol. 31] Q. Where was no question of your identity with the police since they had you in person?

A. No, no.

Q. They had you regardless of what your name was?

A. That is correct.

Q. And did you obtain any monetary benefit as a result of that name?

A. None whatsoever.

Q. You have spoken about arrests, you testified to the arrest for criminal syndicalism twice in San Pedro, California, were you ever arrested on any other occasion?

A. Yes, I was arrested in 1940.

Q. Where?

A. In Detroit, Michigan.

Q. And what was the charge?

A. Well, I have attempted to obtain a copy of the indictment and the order of release and I corresponded with an attorney in Detroit, who defended me at that particular

time and so far he has not sent down the copy of the indictment or the order of release although I believe he has kept my check which I tendered to him.

Mr. White: Did you plead guilty to the indictment or not guilty?

A. I pleaded not guilty. I believe the charge was —

Mr. White: It was read to you, wasn't it?

A. I believe it was a violation of the neutrality act, it was the statute, I believe, of June 2, 1818, violation of the neutrality act.

[fol. 32] Mr. Dunleavy: Was that, as a result of attempts that you had made, and you describe in one of your letters, of obtaining recruits for the fight against Franco in Spain?

A. Yes.

Q. Were you ever brought to trial?

A. No, we were not brought to trial. Ten days after our arrest, my arrest the indictment was not pressed. I believe the Attorney General of the United States said that inasmuch as the case had not been brought to trial when it was fresh and inasmuch as the Spanish government had granted amnesty to quite a number of people who had participated, in the country itself, that there was no reason for pressing charges and I was released.

Q. Were you ever arrested again or at any other time?

A. I was arrested on one other occasion.

Mr. Malone: May I interpose a question there or would you prefer that we wait until you get through? I want to inquire whether or not you knew at that time that you were engaged in these recruiting activities that there was any question as to their legality?

A. No, I had no knowledge whatever that I was violating a law. There was no knowledge whatsoever.

Q. Was the recruiting being conducted openly or surreptitiously?

A. Quite openly. Everybody knew that I, myself, and the people in my organization and in the surroundings that I was traveling in at that time, everybody knew, for [fol. 33] instance, that I, myself, had volunteered to go to

Spain but I had no knowledge whatsoever that I was breaking any law. Of course, I had read history and known of during the American Revolution people coming over from Europe to help our fight here, before we became a nation.

Mr. Dunleavy: Anything else?

Mr. Malone: No, thank you.

Mr. Dunleavy: Going back, when was the other occasion or occasions when you were arrested?

A. Well, it was subsequent to the time that I had left the Communist party.

Q. When did you leave the Communist party?

A. In 1940.

Q. Well, let's go on with the arrests first, when was the arrest if you remember?

A. I can't remember the exact date, I do not even remember the town that it happened in. After I left the Communist party I finally got a job, I would transport cars and then a friend in California, I believe it was, knew that I was in Detroit and that he had had a car wrecked some place, somebody was bringing it out and asked me if I would take the car out there. Well, it was wintertime, I know that, and I took the Southern route and I was stopped in this town while I came out from eating my lunch and the policeman was there and asked, are you driving this car. I had all the papers on my person showing that I was authorized to drive the car for the owner and I was taken to the jail. They wouldn't let me send a wire [fol. 34] to the owner but then after they kept me in jail, I can't remember exactly how long I was there, it may have been two days, it may have been three days, I was released and let go and given back all my possessions.

Q. What town was this, if you remember.

A. I can't remember the town. It was some town in Texas.

Q. But no charges were ever preferred against you?

A. No.

Q. Were you ever arrested on any other occasion?

A. I received one traffic ticket here.

Q. In connection with the arrests?

A. But I wasn't arrested.

Q. In connection with your arrests at San Pedro and at Detroit, at that time you were a member of the Communist party, were you not?

A. Yes.

Q. And your actions were governed largely by instructions which you received?

A. That is correct.

Q. You say you left the Communist party in 1940. Would you tell the Committee in your own words the reason why you left.

A. Well, I'd left the Communist party once before in 1937, I believe, when my father died. I left California and went back home to New York. I dropped out of the Communist party then and that was the time when I assumed my rightful name and said to myself, why are you ashamed to be known as Rudolph Schware, the son of your father. Well, work was almost impossible to be had in New York City at that time and I traveled, I know I went to Chicago [fol. 35] and worked for a short time there and then I went down hitch-hiking all the time, looking for a job. I know I worked in Texas in a packing shed, working for approximately twenty cents an hour, ten hours a day, trying to save enough money to be able to go back north. I know I worked in Indianapolis, outside of Indianapolis picking corn. I was traveling looking for work and finally ended up in Detroit. I was single at the time and the relief that the City of Detroit gave for single men was this place called Fisher Lodge, approximately 2,000, 3,000 people, and food was about as much as the city could afford at that time and I was instrumental in helping to organize an organization in this lodge so that we could get better food and perhaps able to get jobs as a result of that.

It was subsequent to that that I was approached once again by the Communist party to rejoin and I did but my disillusionment had been going on and then you had in 1939, I believe it was, you had your Stalin-Hitler pact which began to raise a lot of questions in my mind and then in 1940 I began to see. At that time I was the State Secretary of the Michigan Workers Alliance and I began to see that the Communist party wasn't interested so much, those beautiful words wasn't so much that but a struggle.

for power on the part of a few individuals that they wanted the power and they didn't care what happened to the other people. Of course, I was a lot older then, I was a lot older then, too, and I'd been questioning and questioning for quite some time and finally I made the events reach the stage where the party organization was trying to say how the organization of which I was the elected secretary should [fol. 36] be run, not for the benefit of the organization, that is when I reached the final decision, you and I part ways and I left.

Q. In other words, if I understand you correctly, Mr. Schware, what you are saying is that you found that the Communist party had no interest in individuals or principles, it was simply a power?

A. They were using you, they were using you. That was probably one of the reasons subsequently when I was living in South Bend, where I finally managed to get a job, that I on one occasion or a couple of occasions, went up to the FBI and asked them, told them who I was and they checked and asked them if I could be of service and they never sought to use my services.

Q. You volunteered your services to them?

A. That is correct, that is correct.

Q. And that was the extent of your opposition to Communism?

A. That is correct at that time.

Q. Until after you returned to the military service?

A. Well—(no answer.)

Q. Mr. Schware, in view of all the stories of who-dunits on radio and television, how does a person dissociate himself from Communism? It seems to me that it is common gossip that they keep a ten-acle on everyone.

Q. Well, all I can speak about is myself, I dropped out.

Q. Just quit?

A. I quit.

Q. That was in part of 1940?

[fol. 37] A. It was the latter part of 1940.

Q. Did you leave Detroit after you'd left the party?

A. Yes.

Q. Where did you go?

A. Well, as I said, I was driving cars, I was then driving

as a caravan driver, you tow one car behind you and go to California or if you are driving like we used to drive Willys out of Toledo, go down to Florida or Studebakers, driving them to Ohio and Missouri.

Q. Where were you living during that period, the time that you left Detroit, until you enlisted in the military service?

A. In South Bend, Indiana.

Q. Were you at any time, while you were in South Bend, prior to 1940 and your entering the military service, engaged in any way in participation with Communist activities?

A. None whatsoever.

Q. When did you go into the army?

A. In 1944, I believe, In January.

Mr. White: '44?

A. '44.

Mr. Dunleavy: '44?

A. '44, in January.

Q. Did you volunteer for the paratroopers?

A. Yes, I did.

Q. Where were you stationed?

A. Well, we were stationed in Toccoa, Georgia, and then in North Carolina, and from North Carolina we went to Louisiana, Camp Polk, and from there we went to San [fol. 38] Francisco, and from San Francisco we went to New Guinea.

Mr. White: Were you drafted?

A. Yes, I was drafted.

Mr. Dunleavy: But you volunteered for paratrooper service!

A. That is correct.

Q. How long did you spend in New Guinea?

A. It was a short period of time, three or four, three months, I became sick.

Q. What was the sickness?

A. Well, I had malaria and I still carry the scars. I had

what they call jungle rot, I had it all over my body and I had sinus, my sinus started to bother me.

Q. You receive compensation from the government for this jungle rot malaria?

A. No, I receive it for sinusitis.

Q. Acquired in the South Pacific?

A. That is correct.

Q. In certain of these letters which you have read into evidence, there you express certain opinions about, for example, the importance of Roosevelt's FEPC legislation, are you familiar with what I am referring to?

A. Yes.

Q. Those principles in there are ones that you still believe in?

A. Yes.

Q. You believe that this can be made a better world to live in?

A. Yes.

[fol. 39] Q. Without the help of the Communists?

A. Absolutely.

Q. Those are expressions of principles which you firmly believe in?

A. That is correct.

Q. After your discharge from the army where did you live?

A. In South Bend, Indiana.

Q. How long did you live in South Bend?

A. From 1946 to 1950.

Mr. Malone: If you will excuse me, I hate to interrupt again, but I wanted to inquire whether you have any additional witnesses and the Chairman what the plans of the Board are. Our plane leaves at five after five.

Mr. Dunleavy: We have additional witnesses.

Mr. Malone: I will stay over tonight and go down in the morning.

Mr. Dunleavy: What kind of work did you do in South Bend?

A. Well, I drove a truck which was the job that I had prior to going in.

Q. No, I mean after you got out.

A. Well, I drove for a few months. I went back to the

job that I had prior to getting into the service and then I went into business for myself selling Venetian blinds and at that time in South Bend, at the start, I was selling scrap plywood, Masonite, and continued that until we decided that I should go to school and I was—started school at Western Michigan and then came down to law school here and sold Venetian blinds all the time in order to take care [fol. 40] of a growing family.

Q. You kept the—you attended school and ran this Venetian blind business in South Bend until you moved out here?

A. Yes.

Q. When did you come out here?

A. In 1950.

Q. And did you enroll in the university at that time?

A. Yes, I did.

Q. In the law school?

A. In the law school.

Q. You enrolled in the university law school in September of 1950?

A. That is correct.

Q. Did you go into business here at the same time?

A. Yes.

Q. What business?

A. Selling Venetian blinds.

Q. Substantially the same business you were in in South Bend?

A. That is correct.

Q. Did you at the time that you enrolled or shortly thereafter, discuss your past background with any one in the law school?

A. It was approximately the second or third week that I was in law school that I made a full disclosure to Dean Gausewitz of my entire past background and the Dean, I believe, advised me at that time not to say to anybody about the fact that I had been a member of the Communist party, not to say anything about it and I haven't, I didn't.

Q. Did he raise any objection to your attending the school?

A. None that I know of.

[fol. 41] Q. You were allowed to continue?

A. I was allowed to continue and I am graduated.

Q. Are you still in the Venetian blind business?

A. No, I don't have any ads—I always had just a small ad in the classified directory and last August I was in an automobile accident and hurt my back and then subsequently I received a notification that I could take the Bar and I believe that was about the same time they were asking for ads for the new book and I was so confident, inasmuch as I could take the Bar, that I could pass it, that I discontinued the ads and they have been discontinued ever since.

Q. How are you presently earning a living?

A. Well, I work part time for Eckert's installing transverse rods for them. I looked for, I went around looking for a job, figuring that I could use the law training as an adjustor for an automobile company—it seems that most of them you have to start off, you have to be about 25 or 30 years old and a man 40 years old is too old. I am also at the present time in the part time business agent for the Linoleum Layers Union.

Q. It is a sort of a living at the present time—living at the present time is sort of a catch as catch can affair?

A. Correct.

Q. How many children do you have?

A. Two.

Q. In your letters that have been read in evidence here you speak of being an atheist, are you an atheist?

A. No, I am a firm believer in God.

Q. You belong to any religious group?

[fol. 42] A. Yes, to the Congregation B'Nai Israel, I belong.

Q. That is the synagogue here in Albuquerque?

A. Yes. I belong to the synagogue in South Bend, Indiana.

Q. You mentioned that you were, on your discharge from the service, you were being married again in the Jewish faith in New York City, is that correct?

A. That is correct.

Q. When did you cease to be an atheist?

A. I was on my death bed.

Q. Where was that?

A. In New Guinea.

Q. And then—

A. I don't know, it changed.

Q. You don't think reading the Bible to this Baptist may have changed you, do you?

A. No, I wouldn't say that.

Q. But in any event any member of your—is your wife a member of the Congregation B'Nai Israel?

A. Yes.

Q. Your children participate?

A. Well, my son, of course, he is just two and a half years old, but when he was born we had what is called the "Brist", which is a very religious ceremony, saying that he is now entering the House of God.

Q. That is the feast of the circumcision, is it not, the same as they have in Catholicism?

A. That is correct and my daughter attends Sunday school, she is six years old.

Q. All of these things were done prior to any question as to your qualifications to take the Bar Examination?

[fol. 43] A. That is correct. We attend services.

Q. Are you familiar with a particular anonymous scholarship fund in the law school at the University of New Mexico?

A. Over my protest, yes.

Q. I wish the Committee to understand that I am asking him to disclose this against his better judgment, will you tell what that scholarship is.

A. It is a small anonymous scholarship for indigent law school students which I have set up at the University of New Mexico Law School.

Q. When did you first start it?

A. I believe it was in 1950.

Q. How much do you pay into it?

A. It is a small one \$50.00 a year.

Q. Are there instructions to the Dean of the Law School that that money is to be used for the assistance of any of the law students?

A. It is to be left to his discretion.

Q. Basically for financial assistance to indigents?

A. That is correct.

Q. And have you paid it for the last four years?

A. I absolutely have and will pay it until I die.

Q. As long as you are financially able?

A. I will always be financially able, I hope.

Q. To contribute the \$50.00?

A. That is correct.

Q. In connection with this hearing here, have you attempted to get letters of recommendation from various persons?

[fol. 44] A. Yes.

Q. Have you been able to get letters of recommendation from every single student in your class?

A. No, not every single student in my class.

Q. How many were you unable to get one from?

A. Well, there are a number who have left Albuquerque.

Q. All those in this vicinity who are here?

A. Well, with the exception of two. One is a member of the Bar and she said she would give me a letter and I haven't been able to get ahold of her since, Miss Streeter, and the other is Charles Chavez.

Q. And has he refused you one?

A. Yes, he refused.

Q. But every other student has given you one of these letters?

A. Yes.

Q. This is the summer session up at the University, how many of the professors in the law school are still up there?

A. There are four, I believe.

Q. Were you able to get letters of recommendation from each of them?

A. Yes, I was.

Q. And they are—I don't want to read them in the record, I'd like to introduce them as a group, various people with whom he'd had dealings and to simplify it I will say that they are Professors Clark, Bauman and Poldervaart, and each of the students with the exception of one, Chavez, has recommended Mr. Schware as a person of high moral character.

[fol. 45] We have no further questions.

(Applicant's Exhibit No. 10, fifteen pages, marked for identification.)

Mr. White: May I ask a question?

Mr. Johnson: Yes, members of the Board will now be permitted to ask any question they wish. We will start with you, Mr. White, any you may have.

Cross-examination.

By Mr. White:

Q. Mr. Schware, will you again state your reasons as to why you quit the communist party in 1940.

A. Well, for a period of time I'd been having serious doubts in my mind as to my course of conduct and my activities in behalf of the Communist party. The first big doubt came with the signing of the Stalin-Hitler pact but I was able to gloss over that. It was in the following year that the realization finally dawned on me that the Communist party, that the words were fine but actually the activities that they did and were carrying on weren't so good.

Q. In other words, those officers who were at the head of it were using it for their own personal gain as against—

A. (Interrupting) It was that they wanted the power. They wanted the power and this is their opportunity and this is the way they were going to get it.

Mr. Dunleavy: You mean agitating?

A. That is correct.

Mr. White: Have you engaged in the practice of law at all?

A. Engaged in the practice of law?

[fol. 46] Q. Yes.

A. Not to my knowledge.

Q. Will you state to the Committee, what, if any, activities you have carried on before any labor body hearings at Los Alamos.

A. I was asked by the Retail Clerks Union, of which I am a member, to participate in some hearings being held in Los Alamos.

Q. And what was the nature of those hearings?

A. The nature of those hearings—an unfair labor charges practice hearing, conducted by the National Labor Relations Board.

Q. And did you appear before the Board?

A. I was there at the hearings.

Q. And when was that?

A. That was last summer.

Cross-examination.

By Mr. Andrews:

Q. I believe you testified on Direct Examination that the only reason you adopted and used an alias was in order to secure employment?

A. That is correct.

Q. Didn't you tell the Committee in Santa Fe that you'd adopted that name because you were working amongst Italians and it made it easier to recruit them into the labor union that you were then working for?

A. Well, it is part of getting a job and to better conditions on the job, it would be easier to do so.

Q. Well, did your employer, the union that employed you at that time know that you were not Italian?

A. There was no union.

Q. Weren't you working as a union organizer at that time?

[fol. 47] A. No.

Q. Didn't you tell us that in Santa Fe?

A. Not to my recollection.

Q. What were you recruiting?

A. There was a union organized after I went to work there and when I think back I never got such a calling down in my life as after that—the union was organized, I brought them into the American Federation of Labor, we went to the Central Labor Union and received a charter from the American Federation of Labor. At that time there was what is known as the Trades Union Unity League, which was run and controlled by the Communist party and I was really laced because after organizing these people I brought them into the American Federation of Labor instead of the Trades Union Unity League.

Q. Well, let's see if I have this straight, now I understood in Santa Fe that you told us that you had adopted this alias so that you could recruit these Italian people to come into the union, is that correct?

A. Yes.

Q. Though you weren't employed by the union?

A. No, no, there was no union, I was looking for a job and this was the place where I could get a job and at the

same time I could organize if I could get the job. At the same time I could organize them into a union.

Q. Which was the motive in using the alias, was it to get the job or was it so that you could get those Italian workers organized?

A. I'd say a combination of both.

Q. So then that you would add to what you stated on [fol. 48] direct examination?

A. That is correct.

Q. What was the motivating force behind your activities in recruiting for the Abraham Lincoln Brigade?

A. Well, I believed that the government of Spain, the Loyalist government needed help and I, myself, had volunteered to help and also I, as a part of that volunteering, attempted to get as many of the people as I knew as possible to come along with me.

Q. And that was part of your activity as part of the Communist party, is that correct?

A. That is right.

Q. And you were going to go over there and risk your life in that cause, is that correct?

A. That is correct.

Q. and when was that now?

A. That was in 1937.

Q. 1937?

A. No, '37 or '38, I wouldn't—the years escape me there.

Mr. Andrews: That is all.

~~Cross-examination.~~

By Mr. Malone:

Q. Mr. Schware, during the period from the beginning of the war in 1941 and until you were drafted in 1944, where were you employed?

A. I was employed, I worked for myself for a while, I was employed for a long time, and then I had these jobs driving cars and finally they stopped making cars, I remember I worked for Caravans, out of South Bend, which is a tow-bar company and then they stopped making Stude-

bakers and I belonged to the Teamsters Union there, in [fol. 49] order to drive the cars, they came under the Teamsters, and went to work for a few trucking companies for short periods of time, very short periods of time and finally ended up working for Fitterling Transportation Company.

Q. Is that in South Bend?

A. In South Bend.

Q. When was it that you worked in the shipyards?

A. The shipyards I worked in was in California, San Pedro.

A. And in what year was that?

A. I started in 1934, I believe, Mr. Malone, and I don't recall right at the moment exactly how long I worked there in the shipyards.

Q. You were single, until you were married during the war, were you?

A. Yes, sir.

Q. Did you obtain any draft deferments during the period from '41 to '44 by reason of your occupation?

A. Not to my knowledge.

Q. You think you just hadn't been called up during that period?

A. That is correct.

Q. Have you had any contact with the Communist party or with any individuals who are members of the Communist party since 1940, when you left them in Detroit?

A. Probably, but I don't ask people what their political affiliations are.

Q. I should have said whom you knew to be members of the Communist party?

A. Well, I know of right here in Albuquerque, there is one person I suspect is a member of the Communist party, [fol. 50] I couldn't prove it.

Q. What has your relationship with him been?

A. Well, this particular person purchases some traverse rods from me and started as a business relationship and you get to talking. I still consider myself a liberal person and I don't think it is a crime and occasionally I will go out and buy Communist literature to see what they are saying. I think a person should keep informed. At the same

time, I also, when I can get it I read the reports of the House UnAmerican Activities Committee. I think a person should keep himself informed as to what is going on in the world.

Q. How frequently would you say that you have purchased Communist literature for that purpose?

A. Not too often, not too often.

Q. In the last year, for example, how many times?

A. Well, probably four or five.

Q. But your interest in it was limited entirely to the basis that you stated?

A. That is correct.

Q. On an interest in learning what their present activities were?

A. That is correct.

Q. Do you feel in the use of aliases in the circumstances that you have testified to, you were resorting to a subterfuge of any kind or did you feel that you were justified because of the end to be accomplished?

A. Well, the end to be accomplished was to get work. I mean it wasn't the question of trying to deceive for a gain [fol. 51] outside of being able to work, to live.

Q. On the occasion of your previous hearing, I stated to you and I want to re-state that, that aspect of the thing gives me a great deal of concern because I feel that a lawyer is tempted daily by reason of expediency of personal gain or for some other reason, to resort to subterfuges and do things that no one else is going to know that he's done and a man who has demonstrated that his *conscious* will permit him to do that raises a question in my mind as to what he would do when he is faced with other situations as a member of the Bar, which he might feel likewise justified the means which he might undertake to accomplish and if there is anything further that you can say concerning that, I would be glad to hear it because frankly it concerns me considerably.

A. Well, first of all, as I stated on the last time, I am a lot older than I was then, I know I am scrupulously honest, I know that. Where I am dealing with somebody else's money, I handle that better probably than my own. I have got a family and they are my main consideration in life.

As I stated when my father died and I went back to see my mother, I—the question raised itself with me, why are you ashamed of the fact that you are Mr. Schware instead of Mr. DiCaprio, and I have never used an alias since then and never will and don't intend to. I have no reason for it and if there was a reason I wouldn't.

Q. How old were you on the last occasion that you did that?

A. Well, I was born in 1914 and I started using one in 1934, that made me 20 years old and then it was when I was [fol. 52] probably 23 years old when I stopped.

Q. What name did you use in the Communist party?

Mr. Johnson: Where?

Mr. Malone: In the Communist party.

A. I probably used the same name that—it was either Rudy DiCaprio or Joe Fiori, one or the other.

Q. You don't recall now?

A. No.

Cross-examination.

By Mr. Houk:

Q. What was the occasion of your quitting the Communist party in 1937 for the first time?

A. My father had died, I was out in California and hadn't heard of his death until subsequent to that and my mother wanted me to come home. They'd always been violently opposed to my belonging to the Communist party and it was a period of bereavement and my mother was able to convince me that I was wrong. Well, then I stayed around New York and I believe I got a job helping on a truck that lasted a short period of time—yes, it was a company that was selling stoves and the job lasted a short period of time and then I took off. I went to Chicago and I worked there for a while and then I went—getting cold, so I figured, if I am going to starve I may as well starve where it is warm, so I went down to Texas and saved enough money to come back up north.

Q. I understood you to say, Mr. Schware, that your

father and your sister had at one time been members of [fol. 53] the Communist party?

A. That is correct.

Q. Well, now you say that he was violently opposed to it.

A. He was violently opposed.

Q. Well, why did he join an organization that he was violently opposed to?

A. My recollection—you remember I was a small boy—is that my father had joined the Communist, he'd been a Socialist all his life and he joined the Communist party sometime in the twenties and there was a strike in the needle trades union industry, in which my father—it was after that or during that strike that my father left the Communist party because of the tactics that they's pursued in the course of that strike and when I say my father was violently opposed I mean that he was violently opposed.

A. Is your sister older or younger than you are?

A. She is older than myself.

Q. Is she still a member of the Communist party?

A. My sister is a violent opponent of the Communist party.

Q. When did she leave the Communist party?

A. I don't know the exact year she left, it was probably 1939.

Q. About the same time that you left it?

A. Well, she left before I did.

Q. She joined it while your father was violently opposed to it, too?

[fol. 54] A. Yes, she'd left—all the children in the house at one time or another, we all left the house.

Q. How many children are there in your family?

A. There are four left today.

Q. Were they all members of the Communist party?

A. Just myself and my sister, I believe my young sister had joined the Young Communist League at one time and left and my brother never participated.

Q. So all of you joined in opposition to your father except one child?

A. That is right, well, no, my sister that died, I am positive never belonged. You see, the whole thing is, you've

got to take into consideration this home atmosphere, this background that we were raised in.

Q. What information did you voluntarily give to the FBI in South Bend, Indiana, about the Communist party?

A. Well, I know I spoke on a number of occasions to one of the agents there of the FBI and was up in their office.

Q. Have you ever contacted the FBI here?

A. No, I have not.

Q. Have they ever contacted you?

A. They contacted me on one occasion.

Q. You feel at liberty to tell us what that was?

A. Yes, I took a job to supply Venetian blinds for the Wherry Housing Project and I employed a certain fellow by the name of Chuck Albaugh and he asked me for a job and I gave him the job, the job came up just prior to my, [fol. 55] I was leaving on a vacation in California and an agent of the Federal Bureau of Investigation came by to ask me what I knew about this man.

Q. Nothing to do with your past membership in the Communist party?

A. No, no.

Q. Mr. Schware, as I understood you, you said it was two or three weeks after you had enrolled in the law school that you confessed, so to speak, to Dean Gausewitz about your past activities. How come you to do it at that time?

A. I don't remember.

Mr. Johnson: I didn't get his answer.

A. I don't recall what the occasion was, all I knew is—Oh, excuse me a minute—I believe, now I am not positive, I believe the Dean had asked all the students to write a short life history and instead of writing a short life history I went in to see him. I couldn't swear to that but it is possible but I know that even if that hadn't been done that I would have told the Dean because I didn't want to travel under any false colors.

Mr. Houk: Before enrolling in the law school were you requested to report any subversive organizations you'd belonged to in the past before being enrolled?

A. Not to the best of my recollection.

Mr. Houk: That is all.

Cross-examination.

By Mr. Whatley:

Q. Mr. Schware, I'd like to know, when was it that you determined to study law?

[fol. 56] A. My wife and I debated my going back to school after I'd come out of the service and in South Bend I was a member of the Jewish War Veterans and there are quite a number of attorneys in leading positions and I became friendly. We asked or we traveled in a circle of attorneys and doctors, medical men and business men, and I thought that I could—I finally decided, well, that I'd like to study law and since graduating from the law school and all the time that I have been in a law school although it was hard personally, I have enjoyed it more and more and I would like to make this my life's work and I know I have been taught enough and have enough respect for the profession that from me no harm would ever come to the name of the profession.

Q. Did you go to school after you were discharged from the army at any other place before you came here and entered law school?

A. I went to school at Western Michigan College.

Q. You'd finished high school before you went into the army?

A. That is correct.

Q. Had you taken any college work at all before you went into the army?

A. I took at City College of New York, I went for a very short period of time.

Q. Now in making your decision that you wanted to study law, did that come about as a result of discussions between you and your wife alone or did you discuss that with any of the lawyers with whom you were associated in this veterans organization that you speak of?

[fol. 57] A. I couldn't recall, I couldn't recall that, sir, I know that we entered school with the objective—lawyer.

Q. Were your father and mother religious people?

A. No, they were not.

Q. Were they atheists?

A. Yes.

Q. When, if you can recall, did you become an atheist or did you just grow up—

A. Just grew up, we never went to the synagogue, I mean. At the present time I don't know if my brother belongs but I know myself and my two sisters have all joined the synagogue.

Q. Now you were an atheist before you became interested in Communism, is that right?

A. That is correct, I always considered myself as one, in other words, I didn't believe in God.

Q. Yes.

A. And I do today.

Q. And what brought you to a realization of the fallacy of that kind of philosophy was this death bed experience that you had in New Guinea?

A. I was very, very sick, I was on the verge of death, according to what the doctors told me and that was, well, that is something that happens once to a person.

Q. Yes.

A. It happened to me and I want my children to grow up to be religious people.

Q. Before you discussed your background, your past, with Dean Gausewitz, did you mention the fact to anyone else and seek to obtain the advise of anyone else with respect to the advisability of making that disclosure to the Dean?

A. Not to my knowledge, sir.

Q. You did not discuss that with your wife?

A. Oh, probably with my wife.

Q. U-huh.

A. Yes, definitely because we discuss practically all things.

Q. Did it ever occur to you before you undertook to obtain this law school, this law education, did it ever occur to you that your experience and your membership in the Communist party and your activities in that organization would in any wise effect you in your ability to be admitted in the Bar?

A. Well, I'd classify that under the heading of a calculated risk. In other words, we knew that there was a possibility that I would not be permitted to take the exam. On the other hand, we also knew that these are things that took place when I was a young person and on that basis we were very much surprised when we received a letter saying that you can take the exam. I was expecting that you gentlemen will say that we have to hold a hearing on your case, Mr. Schware. Frankly that is what I expected.

Q. Well, you made no disclosure to this Board of Bar Examiners until after you had completed your law school, did you?

A. No place in the questionnaire that you submit and I submitted a brief, it was nine pages of information, nowhere does it call for this question, were you ever a Communist.

Q. But what I am trying to get at, Mr. Schware, is that you did not contact any member of the Board of Bar Examiners, nor did you make inquiry with regard to the [fol. 59] advisability of contacting the Board of Bar Examiners before you completed your law course, did you?

A. No, I had not.

Q. The first time you made or had any contact with the Board of Bar Examiners is when you made your application to—

A. That is correct.

Q. —to take the Bar examination!

A. Yes, but as I say, I'd told the Dean this and I'd asked him on a number of occasions and he expressed the opinion to me that there shouldn't be any difficulty.

Q. Now have you, in connection with any of these labor board organizations to which you have belonged, and some of which as I understand it you still belong to, have any of those organizations aided or assisted or abetted you in obtaining a legal education and being admitted to the Bar?

A. No.

Q. Have you any sort of a ten-ative or tacit understanding with any labor organization that if you are admitted to the Bar, you will assist organized labor?

A. Well, I wanted to specialize in labor law. Of course,

I mean when I speak of specializing in labor law, I am speaking in terms of while representing unions, if they would have me, speaking in terms of workmen's compensation and other things.

Q. You have that idea because you honestly believe in that movement?

A. I honestly believe that labor unions are good for the [fol. 60] country, that they can be of assistance in making this a better place to live.

Q. I wasn't present at the time in February when you had your hearing before and that is the reason that I was making these inquiries because I don't know anything about them. I just wanted to get that straightened out. That is all I have.

Cross-examination.

By Mr. Johnson:

Q. How did you happen to come to New Mexico?

A. Well, my daughter was very sick when we came here and we'd been told for my daughter and myself to go to a high dry climate. I wrote to the University of Arizona and they wrote back that they weren't accepting out of state applications. During the thirties I used to hitch-hike back and forth between California and New York a number of times and I remembered Albuquerque as a hot dry—high dry climate and there was the University of New Mexico had a law school so we wrote to the law school here, that is how we happened to come to New Mexico.

Q. When you went in to see Dean Gausewitz you say you made a full disclosure to him about your past affiliations with the Communist party and so forth, is that right?

A. That is correct and he told me that if—he says, said you know, Mr. Schwarze, you are the first person that I have ever met that has ever admitted that he's been a member of the Communist party.

[fol. 61] Q. He raise any question about whether you'd be able to be admitted to the Bar on the basis of it or not?

A. None, none whatsoever.

Q. But I believe that he suggested that you not say anything about it?

A. That is correct, to the—in the school, I mean.

Q. He made no suggestion that you conceal from the Board of Bar Examiners—

A. (Interrupting) No, none whatsoever and if there had been a place on your application which asked that specific question I would have answered that question in the same manner that I answered every other question, making a full disclosure to the best of my knowledge..

Q. You having been a member of the Communist party and myself being quite ignorant of it and having, of course, heard certain things about it, I'd like to ask a question or two about the Communist party. Is it true or is it not true that a bona fide member of the Communist party recognizes only the Communistic authority as the authority to which he owes all allegiance, is that correct?

A. That is correct.

Q. As a Communist, in other words, a Communist who may be an American citizen but if he joins the Communist party, his loyalty and allegiance are to the heads of the Communist party in Russia, is that correct?

A. Well, I know when I was a member of the Communist party while we looked to Russia as the guiding star, still we considered ourselves American citizens and as a legal [fol. 62] political party. Does that answer your question?

Q. Not entirely. Let's say that I belonged to the Communist party and a directive of whatever nature it may be comes from Russia or at least where I understand is the source of words of wisdom and a certain directive comes out to a true member of the Communist party—

A. That is all.

Q. —am I under obligation, if I am a Communist, to obey that directive?

A. That is law and that is probably one of the reasons why the Communist party has been so much repudiated by the American people. We've got, just like myself, there have been hundreds of thousands of people who entered the Communist party's ranks and finally end up asking ourselves questions and starting to question, why, why, and then saying to heck with you.

Q. Well, to get back to this thought that the basic concept

of the Communist party is that they—it recognizes no nationalistic lines, that is, if you belong to the Communist party in the United States you are the same breed of cats as one who belonged to the Communist party in Argentina or whatever that may be?

A. That is correct.

Q. And the belief is that the Communist party as such should be and controlling factor in government, is that right?

A. That is the aim eventually.

Q. All right now, let's say that I am a member of the Communist party and I am residing in the United States and you are a member of the Communist party and you [fol. 63] are residing in Mexico. Say that a war should break out in which Russia, China, whatever countries might make the alignment, would be on the one side and the United States and other countries, including Mexico, would be opposed, and the directive would come out of Russia to me here and one to you down there to do whatever we could to aid the cause of Communistic forces that were at war with, what they would classify if Russia—

A. I have no doubt they would.

Q. —would issue that directive, if I am a true Communist and that directive would be to blow up the railroad tracks or something I would be advised to do it, it would be my duty.

Q. I said I have no doubt.

Q. All right, ~~if~~ I am a Communist I follow that directive, is that correct?

A. Yes.

Q. Now then, that leads me down to this question concerning yourself, you stated that you left the Communist party because of your having reached the conclusion that the aims of those in charge of the policies of the Communist party were personal advancement and what not, rather than a belief in the principles, basic principles of the Communist party. That to me still leaves a doubt in my mind as to whether or not you still believe in the basic principles of the Communist party so that if at some time, let me ask you this question, suppose that the ruler of Russia today were to be overthrown and to the eyes of the Communist, the control of the Communist party was re-

stored to sincere Communists, those that believe in principles of Communism, that condition existed, do you still believe in those principles to the extent that you would [fol. 64] again join the Communist party?

A. Never, never!

Q. And then you say that you are not only, while you may have left the party originally because you didn't believe that the leaders were sincere, you now say that you do not believe in the principles of Communism?

A. I am saying, Judge, that for myself I would never join the Communist party. I would never join the Communist party.

Q. You understand what I am trying to get out?

A. Yes, I see.

Q. As I see it, if you are a true Communist, and you believe that Communism knows no international boundary lines, it is a theory of the government of the workers and so forth. Therefore, if the Communist party were controlled by those that are for the workers, anybody who belongs to the Communist party cannot take an oath as an American citizen, which you have to do when you are admitted to the Bar, that you will up hold the constitution of the United States, you understand that?

A. Yes.

Q. And that is, is it not, entirely foreign to the basic conceptions of the Communist party, isn't that true?

A. No, if I took that oath I mean it, I'd take it in all sincerity, with no hesitation.

Q. I am not talking about that. I am talking about the mere fact that you take an oath to uphold the constitution of the United States, that is contrary to all principles of [fol. 65] Communism, is it not?

A. Yes, sir.

Q. To take that oath?

A. That is correct.

Q. Regardless of whether it is Malenoff or Stalin or the Twelve Apostles in charge of the Communist party, if you took that oath you cannot be a Communist, is that right?

A. I am not a Communist.

Q. No, I am talking generally. I mean, if I am a Communist I cannot take an oath to uphold the constitution of the United States, isn't that true; you honestly cannot do it.

A. That I can't, I couldn't answer that, Judge. I mean I couldn't answer that because they take the oath all the time.

Q. They do it dishonestly, don't they, when the Communists take the oath because if he is bound as a Communist to obey the directive out of Russia—

A. That is correct.

Q. —then he cannot honestly take the oath to uphold the Constitution of the United States, can he?

A. That is correct.

Q. So to me the question goes deeper, whether a man has withdrawn from the Communistic party, it goes deeper down and as to why he has withdrawn, if you merely withdraw from the Communist party, because he didn't like what the leaders were doing. If you still believed in the basic principles of the Communist party, then you are not in a position, whether you are out of the party or actively in it, at the present time you are not in a position to take an oath to uphold the Constitution of the United States if [fol. 66] you have any feeling that that isn't right.

A. Judge—

Q. Do you understand what I am getting at? It is a little hard to explain.

A. I understand. Judge, have you ever read Carl Marx—

Q. I haven't.

A. —Communism manifesto—any way, I think that you will find in that manifesto or maybe, I believe it is in the manifesto, there are seven or eight principles laid down and if anybody studies that thing and studies it carefully, they will find that under the capitalistic government that we have in the United States, approximately five or six have already been fulfilled. The capitalism itself has been able to offer more to the American people than any other system has been able to, but still, even though we have—we are living in the best country in the world, we have highest standard of living, there is still certain inequities which can be changed under the capitalism. Do I make myself clear?

Mr. Whatley: Without resorting to Communism?

A. That is correct and are being changed every day.

Mr. Johnson: Well, that is not what is troubling me.

Under our American system of government we could become any kind of a nation so far as philosophy of government is concerned, providing people go to the polls and so vote it.

A. That is correct.

Q. That happens to be our system. We can change our system, I understand that, but take an oath to uphold our [fol. 67] Constitution, which means that we do it that way.

A. That is correct.

Q. And the communist concept is entirely different.

A. Yes.

Q. They start out, in the first place they recognize no, ostensibly they recognize no boundary lines. It is a class movement, basically it is a class movement.

A. It is an internationalist movement, too.

Q. And there your allegiance is to those that belong to this international class movement rather than to your own government or the country in which you are living.

A. I absolutely agree with you.

Q. And there is where I get back to the question of whether or not your explanation or your reason for withdrawing, is it based on a disbelief in the principles of Communism as opposed to Americanism or is it merely based on the dissatisfaction of the methods being used by certain leaders?

A. Well, originally—

Q. Well, let me add this, if it is merely based on the dissatisfaction with leaders you can still be Communistic at heart.

A. Leaders can change.

Q. That is what I want you to answer. All I want to know is what you want to do.

A. Judge, to get back to your question, I think that I can answer it in this way: Actually that the basic premise of [fol. 68] Communism that the state is all powerful and that the individual does not count. Second, a person, that religion is incompatible with being a Communist. As they put it years ago, religion is the opium of the people. I do not agree with the idea that the state is all powerful and that the individual does not count. I want to be able to raise my children the way I want them to be raised and

not the way somebody else would want them to be raised. I want my children to be religious people. Is that answering your question, Judge? I don't know any other way to do it.

Q. The reason I asked you those questions was because when I inquired why you withdrew you said that you withdrew because of the leadership. To me it went further than that.

A. Well, it went further than that. They were trying to dictate the policies of the organization which I belong to and incorrectly to the detriment of the individuals and actually it comes down to this: who counts, does an individual count.

Mr. Johnson: That answers my questions. Was that all the questions?

Mr. Malone: I think, just so the record will be clear, Mr. Chairman, we should get into it the circumstances under which this matter was discussed with the Supreme Court after a former hearing. I don't think there is any disagreement about it but I thought it might be well to state for the record and be sure that Mr. Schware does concur that at the time of the former meeting when you appeared before the Board and the Board advised you of its action and the Chairman at that time stated to you that you would [fol. 69] have a right to take the matter to the Supreme Court and you stated at that time and I am not trying to bind you by it at all, I merely want it to be clear that the Board only went to the Supreme Court because it understood that you were not going to do that. You at that time said that you didn't expect to take any further action if the Board of Bar Examiners was adverse and then the Chairman stated that he would like to have the matter submitted to the Court to see whether the Court concurred in the Board's action. That was the series of events, as I recall them, and I just wanted to be sure that we are all in agreement that is the way it happened.

A. And subsequently, when I got, and of course, they asked me at the law school what had happened and they said, well, you ought to—when it comes up before the Supreme Court, you should have an opportunity to speak for yourself. It was on that basis.

Mr. Malone: You are entirely within your rights in pursuing the matter further and I don't mean by that question to imply at all that I questioned it or we begrudge you the right or anything else, I merely wanted to be clear that the matter was brought to the Supreme Court.

A. Very informally.

Mr. Malone: On the basis that it was not otherwise going to be presented to the Court and the Board was desirous of reporting the matter to the Court.

Mr. Johnson: Mr. White, you have a question?

Mr. White: One other thing, possibly, further, to clarify the record. You stated in answer to Mr. Dunleavy as to why you quit the Communist party and then when I was [fol. 70] questioning you, my first question was directed to have you state again why you quit the Communist party and you gave the same answer and then when you were answering Mr. Johnson's questions as to your belief in the Communist party, you stated that you no longer believed in certain principles of the Communist party and stated what they were. When did you give up your belief in those principles, was it before you went in the army or after you were in the army or just when?

A. It was probably after I went into the army, it may have been after I left. I mean, you have got to realize I am Rudy Schware, I have been raised in a certain background; that was hammered into me when I was a kid in all the discussions that went on in the family, in all the surroundings. And then I grow older and I grow old and I grow old and some say the older you get the more conservative you get. To me the most important thing today is to provide for my family. Causes come second.

Mr. White: That is all I had.

Mr. Johnson: You mean in answer to his question, that that was a thing that was gradual and you can't put your finger on a particular date, is that what you mean?

A. I couldn't put my finger on a particular date.

Mr. White: It may have been as late as 1944 then that you finally repudiated the principles of the Communist party, 1944 or after, while you were in the army?

A. Well, I, I made a complete break with the Communist party.

[fol. 71] Cross-examination (resumed).

By Mr. Andrews:

Q. I am not talking about the party, I am talking about the repudiation of its principles, that was between 1944 and '46, while you were in the army as near as you can place your finger on it!

A. I couldn't give you the dates.

Q. You still adhere to some of the principles of the Communist party and believe in them?

A. Well, now that is a question I have had arguments with my brother-in-law, who is—who appeared before the House Un-American Activities Committee as a former member of the Communist party and we have discussed certain things and he'd say to me, well, that is the position of the Communist party, and I said, well, I don't know if that is the position of the Communist party but if it is, it is the same thing as the Communist party will always say, that they believe in trade unions. The fact that I believe in trade unionism doesn't mean I am a Communist. I can take that one step further, for instance, in the State of New Mexico, you have the Mine-Mill workers union, which to the best of my knowledge the top leadership is controlled by people who used to be members of the Communist party and who resigned from the Communist party, not in disagreement with the principles of the Communist party but in order to be able to maintain leadership with the union. They talk about trades union unity, that you should have one union federation. Why do they still maintain the Mine-Mill workers union as an individual organization instead of bringing it into the CIO or the AFL. It may mean that some of them on top would lose their jobs. You [fol. 72] see, do you get what I am trying to drive at?

Q. I think I understand. I want to change the subject a little bit. Now the Communist party has long advocated infiltration of labor unions and urged its members to seek executive positions in those unions, is that not correct?

A. That is correct.

Q. Now when you early engaged, first engaged in union

activities, was that at the wish and for the service of the Communist party that you were going that?

A. First to live, to eat, to work; second to build the trade union movement but even when I was a member of the Communist party, to me building a trade union movement doesn't mean building the trade union movement for the Communist party but because the people will get a better standard of living as a result of that activity.

Q. Were you motivated in part by your allegiance to the Communist party?

A. Yes.

Q. Is that still the case in connection with your present union activities?

A. None whatsoever.

Mr. Andrews: That is all.

Mr. Whatley: Are you in accord to the views of the Mine, Mill and Smelter Union?

A. I have just stated I think they ought to go into the CIO or AFL.

Mr. Whatley: I didn't understand that.

[fol. 73] A. And stop being independent.

Mr. Whatley: You didn't say whether or not you thought, as I understood it, that they should go in there?

A. No, my opinion is that you should have one or if it is impossible to have one, to have two, you see, labor organizations, the AFL and the CIO. Now you take your Mine-Mill workers, they are independent for the membership. They would get more and greater benefits if they were to belong to the AFL or the CIO then remaining as independents.

Mr. Whatley: Than they do where they are.

A. So if the Communist party, which preaches trade union unity meant what they said, even though it meant that the top leadership would lose their jobs, they would move Heaven and earth to get them into the CIO or AFL and move themselves out of the picture but they don't do it so between their word and the actions you've got a tremendous gap.

Mr. Whatley: That's all I've got.

Mr. Dunleavy: Now I would like to dictate in the record, it is just a sort of an observation, if you don't mind, and I sort of object to a person asking him whether he still believes in the Communist party. Recently there was a survey made, they stopped people on the streets and asked, what is a Communist. Gee, it is amazing the answers they got. Nobody knows. When you say, Mr. Andrews or Mr. White, I forgot which, do you still believe in some of the principles of the Communist party, political parties have basis things in common. You can't believe in one without certain of the others. For example, they all have basic ideas of voting. They have basic ideas on trade [fol. 74] unions and so on. A broad question is not fair to make to anyone because there must be a certain overlapping of the political parties. I would respectfully like to call attention and I don't want to be telling anybody anything, I just want to make clear my ideas when we speak of Communism, we must distinguish between a political and economic system. Are you referring to Communism as an economic system where you have a collectivist owner of the facilities of production and agriculture or are you speaking as a method of a hierarchy of persons, the elect in the party controlling the whole country such as the Communist party in Russia, which is limited to perhaps a hundred thousand members and they wag the tail.

I just make these observations because it is such a nebulous thing, Communism, could you say that you believe in some of the principles. I make it as no criticism of anyone but I do wish to point out in all fairness—

Mr. Johnson: Are you trying to say, Mr. Dunleavy, that you or I could believe in some one principle of the Republican party and still not be Republicans?

Mr. Dunleavy: Sure, because we are not Democrats, that the Democrats would be traitors. Any other questions?

(Witness excused.)

MOSHAY P. MANN, a witness of lawful age, having first been duly sworn, upon his oath, testified as follows:

[fol. 75] Direct examination.

By Mr. Dunleavy:

Q. What is your name?

A. Moshay P. Mann.

Q. What is your occupation?

A. I am a Rabbi of Congregation B'Nai Israel.

Q. That is here in Albuquerque?

A. Yes, sir.

Q. How long have you been the Rabbi there?

A. Oh, close to two years.

Q. Are you acquainted with Rudolph Schware?

A. Yes, sir.

Q. And the members of his family?

A. Yes, sir.

Q. How long have you known him?

A. A little over a year.

Q. Has your association or knowledge of him been casual or has it been close and intimate or exactly what is your relationship with him?

A. The relationship started when Mr. Schware asked me about helping him to have his child obtain a religious education. He could not afford to become a member of the Congregation at that time because of financial reasons and the problem of getting the child into the school came up and I saw to it that the child was committed and it received religious education. Mr. Schware was very much interested and the child attended regularly. He used to bring the child every Sunday morning and during those Sunday mornings we had occasion to get acquainted and he was very much interested in the progress of his daughter.

[fol. 76] Q. Is he and his wife a member of your Congregation?

A. Yes, sir.

Q. During the period you have known him has your association been sufficiently close to allow you to form an opinion as to his moral character?

A. Yes, sir, I have a very high opinion of Mr. Schware.

I know that not only from the religious angle as such that he was devoted to the ideals of the synagogue but even in his social outlook, such as the problem of discrimination against the workers and against Jews, in which he was vitally interested and he called my attention to such problems, from time to time.

Q. What is your opinion as to his moral character?

A. As far as I know I think it is very high.

Q. In connection with Judaism is membership in the Communist party or the principles of Communism compatible with the teachings of Judaism?

A. The principles of Communism, generally speaking, are as incompatible with Judaism as they are with the dawn of religious Christianity. Judaism regards primarily the faith in God as the prime principle, which of course Communism, as far as I know, is atheistically inclined to say the least. Judaism believes in the dignity of man and that means the dignity of the individual. With Communism it is the state that is uppermost and the individual is to be sacrificed. The principle of Judaism is equality of opportunity and freedom of man. As far as Communism is concerned it is the worship of the dictator and the state and the interest of everyone underneath that, it means nothing. [fol. 77] So you can see roughly speaking, I can't get into all the details, that Communism and Judaism cannot go hand in hand.

Q. They are utterly irreconcilable?

A. That is right.

Mr. Dunleavy: I have no further questions.

Mr. Malone: No questions.

(Witness excused.)

JULIA R. McCULLOCH, a witness of lawful age, having first been duly sworn, upon her oath, testified as follows:

Direct examination.

By Mr. Dunleavy:

Q. What is your name?

A. Julia R. McCulloch.

Q. By whom are you employed?

A. University of New Mexico, College of Law.

Q. Who do you work for there?

A. Dean A. L. Gausewitz.

Q. You are the secretary to Dean Gausewitz?

A. Yes, sir.

Q. Is Dean Gausewitz in town now?

A. No, he is on sabbatic leave.

Q. In connection with your duties as secretary to the Dean, are you familiar with scholarships at the university, in the law school?

A. Yes, sir.

[fol. 78] Q. Are you familiar with an anonymous scholarship for indigent students?

A. Yes, sir.

Q. Who is the donor of that?

A. Mr. Rudolph Schware was the donor of anonymous Scholarship No. 1.

Q. And in what amount?

A. \$50.00 annual.

Q. Who knows about this scholarship?

A. The Dean and I.

Q. When did it commence?

A. It was presented in the academic year 1950, '51, and was awarded, the first one at the 1951 law day.

Q. And has it been continued each year since then?

A. Yes, sir.

Q. A total of four, as I understand it?

A. Yes, sir.

Q. In connection with your duties around the law school, have you had an opportunity to have any dealings with Mr. Schware?

A. Yes, sir.

Q. In a business way?

A. Outside of the law school, yes sir.

Q. Both in and out of the law school?

A. Yes, sir.

Q. Has your association or knowledge of him been fairly intimate?

A. I would say so.

Q. Has your association been such as to form an opinion [fol. 79] of his character?

A. Yes, sir.

Q. What is your opinion as to Mr. Schware's character?

A. In my opinion Mr. Schware is an honorable man, scrupulously honest and fair.

Mr. Dunleavy: That is all. Thank you. Any other questions?

(Witness excused.)

Monroe Fox, a witness of lawful age, having first been duly sworn, upon his oath, testified as follows:

Direct examination.

By Mr. Dunleavy:

Q. What is your name?

A. My name is Monroe Fox.

Q. Where do you live?

A. In Chama, New Mexico.

Q. What is your business or occupation?

A. I am now an attorney.

Q. And you practice law there?

A. In Chama, yes, sir.

Q. You are a graduate of the University of New Mexico law School?

A. That is correct.

Q. How long have you known Rudolph Schware?

A. I have known Mr. Schware since September of 1950, that would make it almost five years now, will be four years in September.

Q. For the purposes of the record, you are blind, are you not, Mr. Fox?

A. Yes, sir, that is correct.

Q. In attending law school who assisted you in your [fol. 80] reading duties and other things like that?

A. My wife did most of my reading for me.

Q. During the course of your studies at the university, did you become fairly well acquainted with Mr. Schware?

A. I did.

Q. Did you have occasion to study with him?

A. Quite often.

Q. Did you become a close personal friend of his?

A. Yes, sir, I consider Mr. Schware to be a personal friend.

A. And he is a close personal friend?

A. Yes, sir, a close personal friend.

Q. During the time that you were in law school you had to rely not only in your wife to assist you in the various difficulties as a result of your blindness but various other students?

A. On various occasions, quite often, yes, sir.

Q. Did Mr. Schware help you at all?

A. Mr. Schware helped me a great deal. Many times Mr. Schware offered his services to read to me when my wife for some reason or other couldn't help me and other times he assisted me about the building and of course other times we discussed cases together so that we were both more clear on the cases and he was a great aid to me.

Q. And even to the extent of considerable inconvenience to him?

A. That is correct, there were many times, for example, that Mr. Schware went out of his way to offer me transportation to and from my home to law school. [fol. 81]

Q. As a result of your association with him in the law school, were you able to form an opinion as to his character?

A. Yes, certainly, sir.

Q. What is your opinion?

A. Well, my opinion of Mr. Schware is that he is a very sound man, a man of integrity, he has principles, those principles, I believe, are very democratic ones, and he not

only has principles, he has the courage and the—to back his convictions.

Q. Is he a person in whom you, as a lawyer, would place confidence?

A. I most assuredly would.

Q. And accept his word in legal matters?

A. That is correct, I certainly would.

A. Being a blind person, I presume, that you must rely a great deal in intuition?

A. That is correct.

Q. And for example, you can't observe people's faces or the color of their skin or the clothes they wear?

A. That is true.

Q. And both by intuition and knowledge and close association you believe that he is a person of high moral character?

A. I do, certainly, sir.

Q. And you personally would recommend his admission to the Bar?

A. I would recommend that he be admitted to the Bar. I believe that Mr. Schware with his principles and his courage would be a definite addition to any society and particularly a society of our profession, where we are in a [fol. 82] position to help people and I believe Mr. Schware truly has the moral convictions and the courage to carry out his convictions and be of great aid as a member of the Bar.

Mr. Dunleavy: I have no further questions.

Mr. Johnson: No questions.

(Witness excused.)

Mr. Dunleavy: I have no further witnesses. I would like to say a few things.

(Off the record.)

Mr. Johnson: What about these letters and so forth?

Mr. Dunleavy: I'd like to have them introduced in evidence and made a part of the record.

Mr. Johnson: And also those recommendations?

Mr. Dunleavy: All those.

Mr. Johnson: Shall we just have them attached to the original deposition without having copies made of them?

Mr. Malone: I think so.

Mr. Johnson: We will just attach them to the original.

Mr. Dunleavy: Thank you.

[fol. 83] STATE OF NEW MEXICO,
County of Bernalillo, ss.:

I, Margaret McCoskey, Notary Public in and for the County of Bernalillo, State of New Mexico, do hereby certify that the foregoing and attached Special Meeting of the Board of Bar Examiners was taken by me on Friday, July 16, 1954, in the offices of Messrs. Iden and Johnson, 715 First National Bank Building, Albuquerque, New Mexico; that all witnesses were by me sworn to testify to the truth, the whole truth and nothing but the truth prior to the giving of their testimony; that said hearing was taken by me in Stenotype and reduced to typewritten transcript; and said Testimony is a true and correct record of the testimony given by said witnesses; and

I further certify that I am neither attorney for, nor related to or employed by any of the parties to this action and, further, that I am not a relative or employee of any attorney or any of the parties hereto, or financially interested in the action.

Witness my hand and seal this 10th day of August, 1954, in the City of Albuquerque, County of Bernalillo, State of New Mexico.

(S.) Margaret McCaskey, Notary Public.

My commission expires:

August 15, 1956.

[fol. 84]

APPLICANT'S EXHIBIT 1

PFC R. Schware
Co. G—187th Glider Inf.
APO 468—Camp Polk
Louisiana

Bette Kemeny
3804 Colonial
Dallas, Texas
511th Parachute Infantry

Thursday, March 16, 1944

Dear Bette:

Knew I couldn't keep it up. A letter a day is more than could be expected of me. Actually if I still didn't see your face before me wouldn't write more than once a week.

There are rumours floating around that we will not get week end passes Saturday. Ain hoping and praying it's not true. Never believe anything until it happens. One thing is certain about this army of ours, its uncertainty. However if I can't make it in will phone you around 1 P. M.

One thing sort of interests me. You asked me my politics. For the past few years have been known as a liberal Democrat. Once upon a time an active member and supporter of the extreme left, speaking now of the Communist Party. You said you were a traveller. In just what sense did you make the statement?

They are attempting to make jumpers out of this entire outfit. Kind of hard to give the boys instructions in the technique of jumping. Helping to build up their muscles so that they can absorb the shock of a parachute landing. Giving private and non-coms push ups as punishment for minor infractions of the rules we lay down. An instructors life is no bed of Roses. Believe that comes nite am just as tired as they are.

Look forward to the day when I'll be transferred back to my old company. Miss old friends. Make new ones it's true. But not like confiding to Thomas, or Ernie, etc.

Incidentally my intentions are honorable. This being leap year, et al, if a certain young woman were to pop a [fol. 85] question, would throw overboard all my avowed

intentions of remaining a member of the grand and glorious fraternity "Bachelor" and get hooked. Hope I'm not scaring you.

Not much more to say. The hours, minutes, seconds, seem to go slower than the blazes. Each minute until I see you is wasted.

"Tis one of those things. Boy looks at gal, knows then and there that the perennial search has come to an end. Just when time is so short too.

But still consider myself lucky in meeting you.

Love: (S.) Rudy.

APPLICANT'S EXHIBIT 2

PFC R. Schware—35542045
Co. G, 187th Gli. Inf—APO 468
c/o Postmaster, San Francisco, Cal.

Mrs. Bette Schware
3804 Colonial
Dallas, Texas

Airmail

May 1, 1944

Sweetheart:

Today was May 1st. There used to be a time when on this particular day I never would work but instead dress myself up in my best and take off with the other proletarians in a May 1st parade, demonstration and later on at night, a mass meeting. May 1st is the workers' holiday born in the travail of the Chicago stockyard workers who went thru the Haymarket Massacre fighting for an 8 hour day. But now your loving husband pulls K. P., gets up 3:15 A. M. to do so, eats a hearty breakfast with toast of course, waits for the sun to come out, lies down on the grass, and goes to sleep. Wakes up sweating. A hot day. The sun felt good. How times have changed.

[fol. 86] Darling you worry me. Please, please take darn good care of yourself. Get rid of the gol darn cold as fast as you can. "Tis spring. Not the season for sore throats, running noses, etc. Promise, honey?

Am glad that you received the letter of welcome into

the family from my mother. Told you would be so. She's a swellegant person. Starting off kind of early with secrcts. Go ahead, young woman, keep your secret. I'll turn the FBI out and see what my mother has to say. Know darn well tho she won't tell me either. (Am laughing and smiling to myself as I wrote the above.) 'Twas ever so, will always be so. Women and their ways. I love you toots.

Had a kind of big mail call. Two letters from yourself, makes up for the absence of mail yesterday, and three others. But looks as if my hunch isn't working out. Still no mail for me from home. Write diligently too. You probably noticed that. Hope I get a letter from them before we leave here.

Haven't run into any of the old company boys yet. No doubt will over there, wherever it may be. Will give them your message to look after me. Thought I was capable of doing so on my own, but am ready, willing and able to accept any and all assistance, from whatever quarter, just so I come back to you. The sooner the better. Miss them tho. Not as much as I do you however.

Go right ahead and type. Whichever is easier for you. Perhaps I never told you but someday may surprise you with my knowledge of typing. Strut some mean fingers. (The truth—Peck and Hunt).

Am sending you \$25 tomorrow. My hobby fund. Put it to good use. Comes with the compliments of the boys who play cards with me every now and then. Its a nice hobby I've newly acquired. Let's the little Mrs. know how much I love her.

Pretty late now. Have so much I want to say. But time for writing is pretty scarce. When I get on the boat will start in on my life history and everything else that runs thru my mind.

Good night, dearest. Once more, I repeat, get well. As long as you are sick I can't be happy.

Regards to the Abrams.

Love & kisses (S.) Rudy.

[fol. 87]

APPLICANT'S EXHIBIT 3

PFC R. Schware—35542045
 Co. G—187th Gli. Inf. APO 468
 c/o P. M.—San Francisco Calif.

Mrs. Rudolph Schware
 3804 Colonial
 Dallas, Texas

Tuesday, May 9th

Wonderful Darling:

Never got around to writing more last night. Instead, like the fool I am, played pinochle. Won a couple of bucks, but is it as important as writing to you? Don't think so.

Have been doing nothing all day long but lazy around. Didn't even bother to eat any meals. Instead had an orange, an apple and a chocolate bar. Getting kinda fat, eating and sleeping. Am in the mood for a nice short 25 mile hike. At least you keep in good condition with a lot of hard work.

How have you been sweetheart? Does the cold still bother you? And honey, just realized how much time has gone by and am wondering, wondering and I suppose will worry until I hear from you again as to your condition. Funny how when a fellow is single he never gives those things a thought. Now an old love sick married man has his fingers crossed and hopes you get your wish.

Time out now my sweet while I sort of index your letters and reread them one by one, looking for questions and will answer each one in turn. When that is out of the way will be ready to start in on myself.

Wednesday 7:30 A. M.

Started reading your letters to me. Interrupted by supper, then went to the movies, an old picture, Errol Flynn in Gentleman Jim. Read a little more and the lights went out. So here I am again saying hello to the best woman on earth, Mrs. Bette Schware.

Cursed myself too after I read your letters. Because there as plain as ever stood her address staring me in the face and saying: "You gol darn fool, don't ever again rush

yourself to the point where you miss seeing what you're looking at. Believe however Fredell should have received my letter. At least the address was correct.

Incidentally before I start answering the questions want [fol. 88] to repeat once more, get a big kick out of rereading your sweet letters to me. Show me what a lucky fellow I am in having you as my wife. You will never regret it. And here is time out for me to once more say, from way deep down, every part of me says I adore you. Do I embarrass you?

Your first letter: These points raised. 1) Were you in the picture. A. No. 2) Why do they use the term stick. A. Just do. Don't know the origin of the term myself but as you said it represents a group of paratroopers jumping from one plane at the same time. Fraction of second intervals, of course. 3) Did I ever use the bucket, A. Will confess that unlike the Captain of the Pinafore who said: "I'm never, never sick at sea" and when repeatedly asked by the crew, "What never?" at last replies: "Hardly ever", I've never been sea or airsick and never had to use the bucket. 4) Are you in or out? You know the answer to that one by now. A trooper at sea. And one who loves you very much and will always cherish this first letter written exactly five days after you met me in what seems like ages ago, the month of March 1944.

Your second letter. No questions. But gives me a very clear picture of a beautiful girl falling in love with a strange man, one who already knew that his search for a mate was over. So the people of Dallas talk and we have snatched a few hours of happiness in a war torn world and will resume after victory. And darling, if anyone but me calls you a brazen hussy, tell me about it and I'll make short shift of him.

4th letter. About an enlargement. Believe my folks have the negatives now. And if I know Harry, he'll get one made. Incidentally any further word from my folks?

And you promise to have a date with me when Victory is won. Absolutely must keep that one. Nothing could keep me away.

5th letter mailed March 30th. The question of my enlisting to fight on the side of the Spanish Republicans against Franco, Hitler & Mussolini. Was in Detroit at

the time. In my position as Secretary of the Wayne County Workers Alliance and also a Chairman of the Single Men's Unemployed League (more on this organization later) was very strategically placed for getting recruits to go across.

And much as I hated it, because I was doing such a good job they kept on putting off and off my own date of departure. Finally put my feet down and insisted to be allowed to go. By this time it was getting toward the end. Finances were low. Arrived in New York with two auto workers. Were given a weeks vacation.

The boys were now going across without passports and stowing away on ships going to France. 'Twas a beautiful system elaborately worked out and couldn't have been successful if the crews weren't overwhelmingly sympathetic to the cause.

[fol. 89] Remember now as if it had just happened. There were 5 of us. Two from San Francisco, us three from Detroit. One morning the S. F. boys left and came back the next day. They had gotten caught. Were unfamiliar with ships. That afternoon the announcement, "We will only be able to send four. One of you will have to go back home."

A simple problem in arithmetic and finances. Cost less to send one person back to Detroit than San Francisco. The choice was left to us as to which one goes back. The 3 of us flipped coins. Two tails and one head fell. I had flipped a head. Given a bus ticket back to Detroit. Cursing my hard luck went back and resumed where I had left off. Thus ends a tale of how not to get to Spain. Incidentally of the last four who left, only one of the Detroit boys lived to come back.

Realize that I have misplaced a couple of your letters. Probably on the bottom of my duffle bag. Know this for a fact because I'll never forget the words you used, "This weekend was definitely your inning."

You tell of your experiences at the office when you came in wearing the set of Wings I had given you. Now a long break in between letters. Wonder why. Couldn't have been a certain phone call, a telegram, sweating out a pass, saying "I do!" and the most wonderful week end in history! From here on in she no longer signs her name

Kemeng but uses the title Mrs. Schware. I love her so. Happy, happy, me. Wonderful, wonderful, Bette.

Let me know when you receive the articles.

There's nothing like rereading mail. Your letter of April 22nd mentions your brother Jack. Now I am surprised. Just dawned on me that you have two brothers, one Sam the other Jack. Which is which dearest? Both in the service? Jack, Georgia, schoolmarm trouble? Sam, Florida, anxious to get into intelligence? Do you see the dilemma I'm in with the realization? Say hello to both of them from me will ya honey.

Question: "Am I chattering to much?" Answer, Chatter away to your hearts content. I love it. The recorder at the moment is playing "This Will Be My Shining Hour". Feel just as the words and music say.

Saturday nites letter. "Do I miss you?" Can you imagine just how much. Although I am anxious to get into the scrap and really do my share to win the war, altho this trip is like one grand vacation, a cruise with all expenses paid, and with my salary now \$114.80 a month, still am positive I'd chuck it all to be with you in Dallas right now. To hold you, kiss you, make love to you. What could be sweeter. Heaven on earth that's just what it would be. [fol. 90] Wanted to mention this before but don't believe I did so. So you pay less taxes now. As you say, it's just what I've always maintained. There is nothing like marriage for two love birds:

Will put in a request for Because and Long Ago & Far Away. Hope they have the records on board.

Bob Parker? The name doesn't strike a familiar chord. Don't believe I have.

Readers Digest. Will it make you happy? Go ahead and get it for me, dearest. And now see where you asked the question about "grounds for divorce". So my pet, I swiped a copy from you. Go ahead and report it to the police. I'll shout from the rooftops, I love her, love her, love her, don't care who knows it, one look at me and the world can see anyway! 'Tis a hard case you'll have. Am laughing as I write this, and Green is watching me and I'm sure he's wondering what I find so amusing. Come 11:30 P. M. each nite we'll do more than go "cluck, cluck". Or will we be to happy to remember?

I enjoyed the picture "A Guy Named Joe" to. Never thought of the song as coming from it. So when it rains you blame me. And all the time I thought I'm the guy who brings sunshine wherever I go. Am putting in a special order to the man above telling him to cut it out. Only a reasonable amount every now and then and none on weekends from now on. One never can tell. Such a request may be granted.

Am now down to the last letter I've received from you. Am sure there will be some waiting for me when we reach our destination. My behind is kind of tired a little. Using my life preserver as a pillow. The sun coming out thru the clouds. Will stretch for a while and then resume once more. Two whole hours have gone by since I started in this morning and I've been thinking of you all the time to. Wonder why? Could it be, am I, do I, believe, heck no; that's just putting it mildly. I am in love.

10 A. M.

Like yourself realize the disadvantages of V mail. So if you don't want to, just keep on writing the same as always. I was just thinking in terms of speed, the saving of cargo space, etc. But am positive there is nothing half so good as the envelope you yourself have written and the pages you wrote in your own handwriting instead of a photograph. So let's forget the suggestion. O. K.?

About Beverly. Could be the gal has some designs on me. She's young tho. 22 years old. Just out of school. Myself say: "Why take chances." The news might make her quit and then again am almost positive it wouldn't. So let it stand as is. Will send you one of her letters and you can judge for yourself.

[fol. 91] In a little while am going to go down below and play pinochle for an hour or so. My form of recreation and of course one means of raising the ante in my hobby fund. Yesterday made a 450 spade hand. Collected \$12 on it. Comes once in a blue moon. So slowly but surely the fund increases. Hope you have no objections.

Will spend the afternoon catching up on mail. Writing home, etc.

The sun is pretty hot so will go below now.

Mr. Schware once again says to a certain Mrs. Schware

Love: (S.) Rudy

P. S. Take good care of yourself darling. Your cold completely gone? How is your health? Any new developments physically speaking? Am very anxious and very much concerned about you.

(S.) R.

P. S. S. Regards to the Abrams and the rest..

(S.) R.

P. S. S. S. Went and dood it again. Taking away your individuality. Making you into a male. Bette is a much nicer name than Rudolph. Simply adore yours.

(S.) R.

• • • • •
APPLICANT'S EXHIBIT 4

PFC R. Schware 35542045
Co. G—187th Gli. Inf. APO 468
c/o P. M.—San Francisco Cal.

Mrs. Bette Schware
3804 Colonial
Dallas, Texas.

May 13, 1944
11 A. M.

Hi Beautiful:

Don't blame me too much if this paper is all blotted up. [fol. 92] The sun beats down and as usual I sweat.

The loudspeaker gives us the news. So even while out at sea can keep abreast of the times and in a limited way know what is happening. Every day tho ask myself the question, WHEN? When will the second front be opened up?

So the C 10 beat Montgomery Ward. That's good news. Gen. Leonard Wood head of that firm is one of the main boys who are out to get Roosevelt and want negotiated peace with Hitler. An isolationist and an appeaser.

From reports, the Italian front, altho only of secondary importance in relation to the big picture, once again shows activity. Perhaps that is an indicator that the time is ripe.

Honey do you realize that as of today one month has gone by since we became man and wife? And so I send

you greetings on this day in absentia, kiss you, wish you well, wonder how you are, what you're doing, whether you will remember to reserve that dance for me to nite, and once more inform you that I love you so.

Going down to get an apple. Will resume later.

Will now go into the saga of Pete Kowal. You want to know about my friends just as I want to know about yours.

Pete was born in Armenia, the only son, two sisters. Most of his life lived on a farm just outside of Pittsburgh, Pa. A year younger than myself. His English was never of the best, but all heart. And of course steady as a rock.

Like so many other homes, the depression took a toll of his. The farm mortgaged to the hilt finally taken away from them. The family separated. His father went to Windsor, Canada. His mother and sisters to Pittsburgh. All three did housework there. Pete wandered from one place to another and finally landed in Detroit.

No job, no money, holes worn thru his shoes, hungry, some one told him about Fishers Lodge. He was admitted to the place the day our leaflets calling for an organizational meeting were distributed. Not having anything else to do and mainly out of curiosity he came to see what was going on.

At the meeting he got up and said it was a crime they wouldn't fix a man's shoes. And he was willing to support any organization that could get those things done. Our small hall was crowded to the rafters. Capacity only two hundred. The men decided to organize. I was elected chairman and I nominated Pete as one of the 15 committeeman. 'Twas thus we met.

Detroit is cold in the wintertime. And altho our organization grew by leaps and bounds, our immediate gains weren't so great. The food immediately improved. We had our own dietician who submitted the menu and the men were fed on the basis of our menu. But jobs was something [fol. 93] else. And purposely we in the Alliance had raised jobs as our No. 1 slogan. Everything else was secondary.

Like many others who had joined a labor organization for the first time, when they didn't get jobs right away, became discouraged, Pete included. Sometimes a fellow

looks at some one and instinctively can see the good in another person.. Pete and I had become friends.

The snow was coming down pretty heavy. He told me one nite he was quitting. Couldn't see where we were accomplishing much. Looked like a waste of his time. Was therefore departing for points unknown.

We took a long walk in the snow that nite. Got wet and shivered, but somehow or other didn't mind it. Instead of dealing with just the local picture I spoke to him of broader horizons of the world picture, what caused depression and mainly showed how some day, under the leadership of the Working class a better world would exist. That all of us, individually had a part to play. Told him for the first time that nite that I was a member of the Communist Party and asked him to join.

On mentioning Spain said that soon I would be going across, that someone would be needed to take my place, that despite his lack of experience thru diligent study he was capable of being that person, that it meant hard work, something he was used to, and besides wherever he went he would run into the same conditions as existed in Detroit.

He joined the party and decided to stick it out. From that nite we were inseparable. I had a job on my hands too. Everything I knew about the labor movement, about organization, my own experiences, were told to Pete. Decided even to live together and took time out the next day to rent a room. Did I mention finances were rather limited. My salary ostensibly was \$25 a week. Considered myself lucky when I saw \$10. Usually slightly less.

Will never forget how we finally located a place that looked decent and at the same time also fitted in with our finances. Went to sleep about 1 A. M. Ten minutes later were out and all packed on our way to Alliance headquarters to spend the nite there. Bedbugs galore. Learnt a lesson. Always look underneath the mattress, in the corners, etc. No matter how clean a place looks superficially, taint always so.

Got our money back the next day, borrowed some and rented a big six room furnished house. We lived in that house until Pete got married. The next week the secretary we had wasn't doing so hot, ousted him and Pete elected in his place.

[fol. 94] Pete helped me with recruiting too. As a result he was arrested with me by the FBI on February 6, 1940. Became a member of an exclusive club, the 59ers. All our prison numbers I believe started with 59.

When we won our WPA job victory, Pete went to work as a carpenter. Paid \$94 a month. An awful lot of money to us at the time. He studied hard and slowly and surely began making a place for himself in Detroit Labor.

One by one his family converged on our house and moved in. Brings me to another memory of Detroit. As a general rule on Saturday nite we would go to a house party or dance. His sisters insisted on going to 5:30 A. M. mass. We lived in what was considered a pretty tough neighborhood, and as he refused to do so, I would leave early for home and escort them there and back.

He met Jean, she worked in the office of one of the VAW locals, fell in love, married the gal. Both his sisters met fellows and did it to. The last I heard from him was working in an auto shop, chairman of the shop committee and had told me he had been sent last winter to attend a party training school in New York.

I left the Party. Pete is still in, but despite this we are still great friends. There are a lot of things I left out in this short resume. But gave you the hi lites.

Have a few things to do so will quit now. Love you very, very much Mrs. Schware. Will be with you on one of these anniversaries. The sooner the better.

(S.) Rudy

APPLICANT'S EXHIBIT 5

PFC R. Schware—35542045
Co. G—187th Gli Inf—APO 468
c/o P. M. San Francisco Cal.

Mrs. Bette Schware
3804 Colonial
Dallas, Texas

Wednesday, June 7, 1944
By Improvised lamp lite

Dearest Bette:

Today for the first time we received news of the outside world. In the form of an 11th Airborne Division Daily News Bulletin. And what good news. Really something to make a fellow sit up and take notice.

[fol. 95] You know what I mean. The curtain has been lifted. The invasion started. 20,000 paratroopers drop from the skies onto French soil. The beginning of the end for Hitlerism and all the filth his name represents to the world.

As far as I can see his doom is sealed: Has at the most a year to live. Events may transpire tho to cut his rule shorter by many many months. Hope so.

Except for the fate or shall we say the power that be I could have been one of the men who jumped in France. Am sure that Danny Hickman, Butchkowski and a few others from my old company took part. As you know would very much preferred to have been one of them. A fellow can't expect all the breaks tho. The japs have to be defeated also. My time will come. Others of my friends will help avenge Joe. He didn't die in vain.

Received two candles per tent as rations today. Are supposed to last us a week. To supplement them improvised our own lites. Using empty glass bottles, empty cans, inside of cocoanuts, empty 50 caliber shells, and what not, a small piece of thick canvas as a wick, some kerosene, and there you are. Almost as good as electric lite.

Has one disadvantage, rather a couple. Smokes quite a bit and the flame keeps flickering now high, now low, and in some respects is hard on the eyes. But hang the incon-

veniences, means I don't have to board anymore and can now write to my hearts content. Then too, will now be able to do a little reading at nite.

A few days ago most of us turned in all our spare American money to be exchanged for Australian. (Time out for a good one.) We finally got around to enlarging our tent today. One of the logs used for support now turns out to be the home of a veritable host of piss ants. Started crawling all over my cot and on my body. Investigated and found the cause. Will have to tear it down tomorrow. In the meantime went on an ant hunt. Will resume as soon as I finish this letter.

Great sport darling. Dip a pole in kerosene, lite the end, and start burning them. Find the knot holes in the wood they come out of, pour a little kerosene in that. Put insect repellent powder on the logs (ordinary foot powder) and those you miss by the above methods, kill by hand. The damn things really are a nuisance cause it makes me waste so much valuable time. Time that can be used to much better advantage writing to you. Cause I love you Blue Eyes.

Finally worked out my letter writing to a science. You once a day. My family, the various members, every other day, and whenever I am able to my friends.

Seem to have been sidetracked by what I shall call the incident of the ants. Was speaking of matters financial. Last nite we were given our exchanged money back. Of course a poker game started immediately. Was going to [fol. 96] go to sleep early, but right after bed check, walked over, one of the fellows had just gone broke, took his place, and one hour later had added six more dollars to the fund. Only a nickle and dime game.

But there is an aftermath to the above. Sometime today, someone, have my suspicions, but at the moment can't prove it, tomorrow will set a permanent trap; stole a pound note out of my wallet. Was given four and now there are only three. Didn't keep it on my person as I should have done, but kept it in the box I have for my toilet articles and other miscellaneous items. Only the fellows in the tent knew about it. Actually not all of them. Result, one certain person must be the thief. Honestly, hope I'm wrong. That

some one from another company did the dirty trick. But then a stranger would have taken it all. And during the day the only time I wasn't close by was while eating. Say to myself, a mistake was made, only received three notes, but know 'tisn't so, definitely had four. Damn. Don't care about the money. Wouldn't make me or break me. But just like the matter of the nightly bed check it's the idea of the thing. That one man in my own squad is low enough to be a sneak thief. And we go into combat together.

About all of any importance that has happened. The invasion good news, thievery bad.

Love you oh so much. Want you more than ever. Our time will come. This morning singing "Oh What a Beautiful Morning" (and tonite, of all things, "I'll be Home for Xmas". Wish I could be.

How are you darling? Altho it isn't so, today no one thought about me. Not even one teeny weeny letter. Actually the last two mail calls in the company have been mighty slim. Soon our mail will begin to catch up.

Have a chore to do if I expect to sleep peacefully tonite. Must resume my ant hunt. Good night my love, sleep tite, until tomorrow.

Love: (S.) Rudy.

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APPLICANT'S EXHIBIT 6

Pvt. R. Schware—35542045
Co. G—187th Gli. Inf—APO 468
c/o P. M.—San Francisco, Calif.

Mrs. Bette Schware
3804 Colonial
Dallas, Texas

[fol. 97]

Tuesday—June 13, 1944
Improvised letter

Dearest Wife:

Had two reminders of this day. Look up above and verily you will see what I meaneth. First two most wel-

come letters from you. May 23rd & 26th. How did you enjoy your visit with Fredell wonderful?

Second the enclosed card from the Leesville U. S. O. Shall we keep it as a memento? All during the day have thought about you. Didn't do much all day long so had plenty of time.

Actually most of the time spent in bull session with the boys. Our talk centered mainly around a number of topics which cannot be mentioned in letters. All a result of our Divisional Commander giving us a pep talk.

The debates in our tents waxed hot and heavy. Enjoyed myself, what with every few minutes putting my two cents worth in. A long time since I've debated so you can very well picture me in my element.

The first letter from Fredell arrived. Quite interesting and will answer at the earliest opportunity. Also received word from the Veteran's Administration notifying me that the change in beneficiary on the insurance policy has gone thru and been approved. So our license didn't have to be notarized after all. When you asked me to send it back couldn't do it. Had already turned it in. Speaking of insurance, reminds me I have a civilian policy that will need some changing. Will write tomorrow. Plumb forgot all about it.

Before going to sleep last nite, lay on the cot and kept singing until the fellows got tired of my screeching and gave the gentle hint: "Shut Up!"

Oh those comics. All the boys in the tent read them. The first time in what seems like ages that we knew what Lil Abner was doing. Thanks an awful lot. A second anniversary present that was very welcome.

Tell me the results of your plastic surgery. Did you do a good job? How could you have distorted the nose in the first place? Will be on pins and needles until I know. Will answer your questions tomorrow.

It's pretty late now Bette. Time for a soldier boy to hit the hay and dream of the one and only.

Would be an understatement by just saying I Love You. My heart is filled to overflowing.

You mentioned a Rabbi friend of yours. Seems I have a nitely chore. An atheist, like myself, reading a chapter

from the Bible each nite to Sampson. And we insist on absolute quite while it is being done. 8th chapter of Mat-hews tonite.

A trillion kisses beautiful toots. Wink those blue eyes [fol. 98] at me. Hello to the Abrams and Celia. To bed, to bed. Good nite, pleasant dreams.

Love: (S.) Rudy.

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APPLICANT'S EXHIBIT 7

PFC R. Schware—35542045
Co. G—187th Gli. Inf.—APO 468
c/o P. M.—San Francisco, Cal.

Mrs. Bette Schware
3804 Colonial
Dallas, Texas

Wednesday—June 14, 1944
9 P. M.

Hi Toots:

Miracle of Miracles we received a partial pay today. So am having check for \$25 made out to you and will mail it as soon as finance makes it out. Was paid thirty and getting rid of fifty. The balance to the folks.

Miracle number two. Our mail orderly received air mail stamped envelopes. Means that for the next month will be able to send all letters out via air and possibly speed my messages up by at least a week.

Thirdly, the Chaplain came thru once again and I now have this tablet which, provided I shorten letters, should last at least a week. After that will see what the Red Cross has to offer. Their is no stationery for sale any wheres around these parts.

For once put in a real good hard day's work. Moving some heavy cans of tar from one field to another. Made the sweat flow. One consolation Sampson washed a pair of fatigues for me.

The days and weeks roll slowly by. We work, take things easy. Play some cards, argue, and begin to wonder

when our training will start. Not that I'll be able to tell you anything about it, the Army, and the security of all the men in the Division depend on those on the outside, and even most beloved wives and members of your family are thus considered, shouldn't know a thing about what you personally are doing. 'Tis better so.

[fol. 99] Am not sure it will pass by the censor but will try to let you know how this paratrooper husband of yours will make out on his next jump. Not the details of anything connected with it, but just no broken legs, ankles or bones.

Know you worry about me. Not necessary tho. Sweetheart one of the safest things in the world is to jump. Like it. Look forward to the time I'll get another chance to stand up, hook up, and yell Geronimo. Besides ain't I a lucky guy? Haven't I got the most beautiful, most adorable, sweetest, most conscientious and thoughtful gal in the world as my mate?

Started a letter to Fredell this morning. Haven't had a chance to finish it. Will do so tomorrow for sure.

About the book of my brother's poetry. Have always maintained that it Stinks. As Mike says: "We're a slightly screwy family but plenty O. K." Well Herman was the nut. His nickname Rabelais. Never did get along with him because our politics were on very divergent paths. Always at loggerheads. He was smart. Can't deny that. But from earliest childhood, run over by a car, had a weak heart which led to an early death.

If my memory doesn't fail me, once upon a time, during those hardworking days when I helped out the milkman and attended grammar school, won second place in an elocution contest reciting: "Friends, Romans and countrymen, Lend me your Ears." The prize a book of Shakespear's complete works in prose. He occupies a prominent place in the extensive library our family has accumulated over the years. When I was last home on furlo took my sisters Pearl and Beverly out one nite to see Paul Robeson in Othello. Will reread his works many a time again as old age creeps up. Will you let me read a few passages out loud to you when I come home from the wars?

So you hired Kravity as a press agent. Will keep your

secret and tell you very frankly don't believe a word of it. You never have and never will need one. And am smiling as I write. As I told my folks, my best friends and as I have seen from your friends "To know you is to love you." Nuff said!

How do you like Mike's style of writing. He wrote one real good book on his experiences as a seaman. Only read one other of his books, didn't enjoy it in the least. Will admit he has talent. He always was the darling of the family, but am positive the new addition will chase him off his pedestal without any competition.

Here I write and write and forget all about the passage of time. Must be because whenever I do feel so close to you that if I stretched my hand out would be able to touch your soft body. Will always be so.

But the flickering of the light is hard on the eyes, Have temporarily given up the idea of electricity. A shortage of batteries. A reminder to me that I'm not back in the states.

[fol. 100] Beloved you say there is so much you want to know about me. The passage of time will reveal all. Am good and bad, truly mostly good. Smart and dumb. A little smacking of intelligence. But smart enough to take advantage of the fates that brought us together. Up till a few years ago always looking after the other persons welfare with the utter disregard of his own. Not any more Bette. You're always going to be my most wonderful and svelegant headache. And no objections will be countenanced.

Reminds me, are the spelling lessons gonna be continued. Any recent blunders? And when it comes to vocabulary in comparison to you I run a close twentieth.

By- for now. Miss you more than I thought possible my Chin-Up-Gal.

Pleasant dreams. A nice long kiss.

Love: (S.) Rudy.

P. S. No mail today.

APPLICANT'S EXHIBIT 8

PFC R. Schware—35542045

Co. G—187th Gli. Inf. APO 468
c/o P. M.—San Francisco, Calif.

Mrs. Bette Schware
3804 Colonial
Dallas, Texas

Tuesday—June 20, 1944

Dearest Bette:

Read the clipping you enclosed in the letter I received yesterday. In return am sending one back. The FEPC is one of the most important of Roosevelt's 'win the war' agencies. It has helped to break down the reactionary barrier that relegated Negroes to the unskilled, most dirty jobs at the lowest wages, in order to allow them to contribute their labor to increasing production for victory. Thousands of them now perform skilled labor in many industries that they never had a chance of entering before Roosevelt established the FEPC.

White supremacy is a tool of the Southern bourbons to [fol. 101] continue in power at the expense of the welfare of the South itself and the nation as a whole. It is on a par with Hitler's attempt to delude the German people into believing that they are Aryan supermen.

You yourself know intimately of the evil: Anti-Semitism. You know that the Jewish people thruout the ages have made important contributions to the cause of progress. Jim Crow is on a par with Anti-Semitism, anti-Catholicism, anti-Communism. In a democracy one cannot discriminate against a minority. When one does, consciously or unconsciously they are playing Hitler's game, making use of his favorite tactics to divide us, certainly not contributing to National Unity which is so important not only for winning the war in the shortest period of time, but also for the winning of a just peace and making this world a better place to live in for all.

All the above anti's I mentioned are most dangerous and stupid mistakes for Americans to make. They violate

Christian ethics as well as all other ethical principles that recognize the brotherhood of man. To top it all off, consider them immoral.

Now that much to my surprise I went into what could be called polemics, let me go back to reality. Enclosed find check for \$25 that I mentioned in previous letters. Finally got it back from finance.

My turn to clean machine guns this morning. Afternoon spent in washing clothes. System, boil them in a can first, after you have solved the problem of starting a fire, then rinse in creek, then soap once more then rinse and hang out to dry. A real chore but most welcome unless one wants to walk around smelling bad from sweat all the time.

Sweetheart this is all I have time for to-night. Things to do.

Love you. Go ahead and ask all the thousand and one questions you want to. Hang the repetition. 'Tis you speaking and you can repeat a million and one times and I'll answers always.

Truly very much in

Love: (S.) Rudy.

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APPLICANT'S EXHIBIT 9

PFC R. Schware—35542045
Co. G—187th Gli. Inf.—APO 468
c/o P. M.—San Francisco, Calif.

Mrs. Bette Schware
3804 Colonial
Dallas, Texas

[fol. 102]

Tuesday, June 30, 1944

Hi Blue Eyes:

Don't worry about the stationery. When a man has letters to write, especially to a hopyey of a gal, then anything goes. Just so long as he gets his message across.

Received your letter of June 4th today. Surprised that by then you hadn't already been notified that I had reached my destination safely. Something wrong somewhere. Hope

that by this late date you have received some of my letters. Otherwise you have plenty of justification for saying you have been deserted. Have no fear beautiful that's something that will never never happen.

Have a request to make. May sound strange but isn't. We have a young kid in the platoon, hails from San Bernardino, Calif., age 20, hair slick, on the thin side, of Spanish extraction or could be Mexican, ne, Frank M. Herrera, who very seldom receives any mail. Gives him a sort of down in the mouth expression.

Now for the request. Could you find a couple of gals who are willing to sacrifice 15 or 20 minutes of their time each week to write to him? His favorite pin-up gal, Heddy Lamar. Oh the things that war makes a man do. Will judge the results a month and a half from now.

Went up to see Ernie & Thomas to-night. Were out, so had the 2 mile walk as exercise. Left a message tho for them to come down and repay a visit. Besides want to know what you wrote to them.

Hey, wife, when am I gonna hear that my favorite "Chin-Up Gal" is sending me that long awaited picture to cheer his lonely hours and of course, vain little me, to make the other fellows sigh with envy. You are a delicious dish of femininity if I do say so myself.

Now here's one for you. Don't envy anyone who has to read my handwriting. For the first time a few of the words you have written cannot be deciphered on this end. Here 'tis. "Am mailing the Sunday funnies—will mail the O M Greadag Tuesday which is when the stand gets it in." ?

Really surprised to hear that the male shortage has reached such alarming proportions that you gals are reduced to robbing the cradle. 9 and 10 years old! My, dear, did you?

The two songs were played over and over and over again on the trip across. Are catchy. My favorite is still "Happy, happy, wedding day". "Oh What a Beautiful Morning". Really was that memorable day.

Will write you tomorrow during lunch hour. Otherwise sort of got a hunch the first day will go by without my writing to you.

The unknown admirer is glad you like the flowers. With your assistance, sending checks, will be a weekly occurrence for the duration. When he gets home, no doubt will deliver them in person. Then you'll find out who he is.
 [fol. 103] Happy in the knowledge you like them.

Take good care of yourself Bette. Don't blister too much from the sun the way I did.

Regards to all. No time for more now.

A thousand and three kisses. A hug. And you can bet your boots I'll attempt to dance your feet off.

Love You Very Much, (S.) Rudy.

PS This is a request for a package. Could you buy me a couple of wrist watch bands in the P. X. (leather)? Irreplaceable here and mine is starting to wear out fast. Enclose whatever else you want to in the package. Would do the same for you if our positions were reversed.

Liked the verses and joke. Sure intend to take good care of myself.

(S.) R.

APPLICANT'S EXHIBIT 10

15 July 1954

To Whom It May Concern:

The undersigned has known Rudolph Schware from September, 1950, when we entered the law school of the University of New Mexico, to the date hereof. I have never known him to commit or to participate in an immoral or unmoral act. To the best of my knowledge he is a person of good moral character and I believe him to be of good moral character.

Respectfully, (S.) Heister H. Drum, Heister H. Drum.

[fol. 104]

July 12, 1954

To Whom It May Concern:

I have known Mr. Rudolph Schwäré since September of 1950, at which time we entered the College of Law at the University of New Mexico.

During this time I saw Mr. Schware almost daily as a student and upon occasion socially. During this time it was my impression that Mr. Schware was of very high moral character, and that he possessed a high degree of integrity. This is still my impression at this writing.

(S.) Julian S. Ertz, Julian S. Ertz.

410 Martinez Lane N. E.

July 13, 1954

To Whom This May Concern:

I have known Mr. Rudolph Schwae for two years and have become intemately acquainted with him. His moral character in my opinion is far and beyond the highest standard of any person I have ever come in contact with. His word is his bond.

Sincerely yours, (S.) Felix Martinez, Felix Martinez.

July 15, 1954

To Whom It May Concern:

This is to state that I have known Mr. Rudolph Schware as a student at the University of New Mexico College of Law for a period of three years, during said period Mr. Schware has conducted himself as a person of good moral character; that using said period as a basis for my opinion he is a person of good moral character and is possessed of ability to qualify him to follow the profession of [fol. 105] law. 2

(S.) Terrance L. Dolan, Terrance L. Dolan, Attorney at Law.

1709 Cagua Dr., N. E.
Albuquerque, New Mexico
July 12, 1954

To Whom It May Concern:

I have known Rudolph Schware for the past 3½ years, and as far as I know he is of good moral character. He appears to be a quiet and respectable man.

Sincerely, (S.) Mrs. S. C. Lefton, Mrs. S. C. Lefton.

• • • • •
July 15, 1954

To Whom It May Concern:

This is to state that I have known Mr. Rudolph Schware as a student of mine at the University of New Mexico College of Law for the past two years; that during this time he has conducted himself as a person of good moral character; and that based on my knowledge about him, it is my considered and sincere opinion that he is a person of good moral character, qualified to be admitted to the practice of law.

(S.) Henry Weihofen, Henry Weihofen, Professor of Law.

• • • • •
July 15, 1954

To Whom It May Concern:

This is to certify that I have known Mr. Rudolph Schware for over three years. I have had business relations with him and have always found him to be absolutely honest and trustworthy. I know, for a fact, that he is a person of the highest and best moral character. His word can be relied on.

(S.) Cecil Young, Cecil Young, Service Enterprises.

December 13, 1952

Daily People's World,
590 Folsom St.,
San Francisco 5, California

Gentlemen:

One of your readers thought it would be nice if I received a one year gift subscription to your newspaper. They must have therefore expended the money to enter such a subscription in my name for a period starting December 9, 1952, and expiring December 10, 1953.

This is to notify you that I have no desire to have my name on your mailing list as a subscriber to your paper. I would appreciate it if you would therefore remove my name from your mailing list at your earliest convenience.

Yours truly, Rudolph Schware.

July 16, 1954

To Whom It May Concern:

I have known Rudolph Schware since September of 1950. We were classmates at the University of New Mexico Law School.

To the best of my knowledge, Mr. Schware is known to be honest, trustworthy of good moral character.

(S.) Louis B. Ogden, Louis B. Ogden.

[fol. 107]

Albuquerque, New Mexico

July 16, 1954

To Whom It May Concern:

I have known Mr. Rudolph Schware since the fall of 1950. I have had business dealings with him; I know him personally. I know Mr. Schware to be open-handed, charitable toward others, and scrupulously honest in every situation. Were he to represent me, I should have every confidence in his integrity.

(S.) Julia R. McCulloch, Mrs. Silas A. McCulloch.

NEW MEXICO
BUILDING AND CONSTRUCTION TRADES COUNCIL

Albuquerque, New Mexico
July 16, 1954.

To Whom it may concern:

This is to certify that I have known Mr. Rudolph Schware for the past eight months and that he is Business Agent for the Linoleum Layers Local Union #1665 in the State of New Mexico.

I have known and talked to Mr. Schware both on and off the job during these months and find him to be a trustworthy upright citizen and so far as I know, good moral character.

Sincerely yours, (S.) R. D. Chitwood, R. D. Chitwood, Business Representative.

• • • • •
July 16, 1954

To Whom it May Concern:

I have known Mr. Rudolph Schware for one year and a half and during this time, I have come to know him well. In my dealings and other personal contact with him, I find him honest, trustworthy and his character to my estimation is above reproach.

Elia Mosesso. (S.) Elia Mosesso.

• • • • •
[fol. 108]

July 15, 1954

To Whom it May Concern:

I have known Mr. Rudolph Schware for the past two years, during which time I was Office Secretary for the Linoleum Layers Local Union #1665, and as far as I know, he is of good moral character.

Sincerely, (S.) Ruby B. Quillen.

July 16, 1954

To Whom It May Concern:

This is to certify that the undersigned has known Mr. Rudolph Schware as a student at the College of Law here at the University of New Mexico for three years. During this time Mr. Schware has conducted himself as a person of good moral character and on the basis of his work with us here I believe him to be qualified to be admitted to the practice of law.

(S.) Arie Poldervaart, Arie Poldervaart, Associate Professor of Law.

July 16, 1954

To Whom It May Concern:

I have known Mr. Rudolph Schware as a student in the University of New Mexico College of Law for over two years. During this time he has conducted himself as a person of good moral character. On the basis of the information I have available, I believe him to be qualified to be admitted to the practice of law.

(S.) John A. Bauman, John A. Bauman, Associate Professor of Law.

[fol. 109]

July 16, 1954

To Whom It May Concern:

This will certify that I have known Mr. Rudolph Schware as a student in the University of New Mexico College of Law for over three years. During this time he has conducted himself as a person of good moral character. It is my opinion that he is qualified to be admitted to the practice of law.

(S.) Robert Emmet Clark, Robert Emmet Clark, Associate Professor of Law.

In The Supreme Court of New Mexico

Filed

Aug 25 1954

Lowell C. Green, Clerk

[fol. 110] IN SUPREME COURT OF NEW MEXICO

RESPONSE TO PETITION AND TO ORDER TO SHOW CAUSE

Respondent, Board of Bar Examiners of the State of New Mexico, states:

First Defense

1. With respect to the introductory paragraph of said Petition, respondent admits that this Honorable Court has plenary and inherent jurisdiction to regulate the practice of law and to review the decision of the respondent in this case, subject to the rules of law governing such reviews.

2. The respondent admits the allegations of paragraph 1 of the Petition.

3. With respect to paragraph 2 of the Petition, respondent is unable to admit or to deny the same since it has not complete information as to the matters therein referred to; further, that respondent has not made any claim that petitioner answered any questions in his application other than fully and accurately; nor is the respondent's decision in the petitioner's case based upon any such claim.

4. The respondent denies the allegations of paragraph 3 of the Petition and to the contrary states that the petitioner has not fulfilled all the conditions and requirements established for permission to take the bar examination for the reason that he has not satisfied the respondent of his good moral character as required by Rule I(1) and Rule III(7) of the Rules Governing Admission to the Bar of [fol. 111] the State of New Mexico.

5. Respondent admits the allegations of paragraph 4 of the petition.

6. With respect to paragraph 5 of the Petition, the respondent admits that the petitioner was given an informal hearing as alleged and that following said hearing,

the petitioner was advised that he was not entitled to take the bar examination. The respondent is unable to admit or deny that the answers then given by the petitioner at said informal hearing were full, complete and true as alleged in said paragraph for the reason that respondent has no information touching said matters other than supplied by the petitioner himself. Further, that respondent has not made any claim that said answers were not full, complete and true, nor has respondent based its decision in the case of petitioner upon any such claim.

7. With respect to paragraph 6 of the Petition, respondent admits that no transcript of the testimony was taken at said hearing, but denies that no record of said meeting was kept; and to the contrary alleges that the following minutes of the action then taken by the respondent were duly recorded by the secretary of the respondent:

"No. 1309 RUDOLPH SCHWARTZ. It is moved by Board Member Frank Andrews that the application of Rudolph Schwartz to take the bar examination be denied for the reason that, taking into consideration the use of aliases by the applicant, his former connection with subversive organizations, and his record of arrests, he has failed to satisfy the Board as to the requisite moral character for admission to the Bar of New Mexico. Whereupon said motion is duly seconded by Board Member Ross L. Malone, and unanimously passed."

Further that said minutes were a matter of public record available for the inspection of the petitioner upon their being prepared after said meeting of the respondent on [fol. 112] February 22, 1954; and that petitioner was fully cognizant of the matters discussed with him and in his presence at said meeting, said matters being the identical matters referred to in the minutes hereinabove quoted.

8. Respondent admits the allegations in paragraphs 7, 8 and 9 of the Petition.

9. With respect to paragraph 10 of the Petition, respondent admits that the quoted portion of the minutes of the respondent were read to the petitioner at the hearing on July 16, 1954, and denies the remaining allegations of said paragraph 10; and to the contrary states that the petitioner

knew of the nature and basis of the respondent's ruling prior thereto and further had access to the quoted minutes of the respondent since shortly after February 22, 1954, said minutes being a matter of public record in the office of the Clerk of the Supreme Court of New Mexico.

10. With respect to paragraph 11 of the Petition, the respondent admits the allegations thereof as being part of the truth, and to make said paragraph state the whole truth touching the subject matter of said paragraph the respondent further states: that the petitioner and his counsel were allowed to examine all relevant *public* records of the respondent; that certain records of the respondent consist of the answers to inquiries made concerning applicants for admission to the State Bar of New Mexico; that these inquiries are made by the respondent and answered by informants upon the express understanding that all information so given by such informants shall be held in strict confidence by the respondent; that this procedure is expressly consented to by applicants for admission to the State Bar, and was expressly consented to by the petitioner the State Bar on the basis of such confidential information [fol. 113] in this case. Further, that the respondent does not reach a decision upon applications for admission to so obtained and did not do so in the case of the petitioner in this cause; that the bases of the decision of the respondent in the petitioner's case here sought to be reviewed are not to be found in such confidential information and that said decision of the respondent in the petitioner's case is based upon facts disclosed by the petitioner himself.

11. With respect to paragraph 12 of the petition, respondent denies that the matters therein referred to satisfied the respondent that the petitioner was of good moral character and admits the other allegations thereof.

12. Respondent admits the allegations of paragraph 13 of the Petition.

13. Respondent admits the allegations of paragraph 14 of the Petition.

14. With respect to paragraph 15 and the twelve subparagraphs thereof, the respondent denies the truth, the materiality and legal sufficiency of all and every allegation therein contained.

Second Defense

1. Respondent is charged with the responsibility under N. M. S. (1941 Comp.) S. 18-108, as amended, and the Rules Governing Admission to the Bar of the State of New Mexico of examining candidates for admission to the Bar as to their qualifications and to recommend such as fulfill the same to this Honorable Court for admission to practice. An essential qualification of any applicant for admission is that he be of good moral character. It is provided by Rule III(7):

[fol. 114] "That the Board of Bar Examiners may decline to permit any such applicant to take the examination when not satisfied of his good moral character."

2. The respondent has conducted two hearings touching the moral character of the petitioner, one on February 22, 1954, of which no transcript of testimony has been preserved which resulted in the resolution quoted in paragraph 7 of the First Defense hereinabove stated. The other hearing was held on July 16, 1954, and of this meeting a transcript of testimony has been preserved and a copy thereof is made a part of the record herein by paragraph 12 on page 4 of the Petition.

4. The information obtained at both of said hearings and the information upon which the respondent acted in reaching the decision here sought to be reviewed, is reflected in the transcript of the special meeting of the Board of Bar Examiners held Friday, July 16, 1954. Based upon said evidence, the respondent believes that the resolution it adopted at its meeting of February 22, 1954, and affirmed at its meeting of July 16, 1954, is in all respects lawful and proper and that "the application of Rudolph Schware to take the bar examination (should) be denied for the reason that taking into consideration the use of aliases by the applicant, his former connection with subversive organizations, and his record of arrests, he has failed to satisfy the Board as to the requisite moral character for admission to the Bar of New Mexico."

Wherefore having fully answered the allegations of the Petition, the respondent prays that the Petition be dismissed and the Order to Show Cause discharged.

[fols. 115-173] _____, Attorney General of New Mexico; (S.) Richard H. Robinson, Richard H. Robinson, Attorney General; (S.) Fred M. Standley, Fred M. Standley, Assistant Attorney General; (S.) William A. Sloan, William A. Sloan, of counsel for defendant, Box 558, Albuquerque, New Mexico.

Duly sworn to by Bryan G. Johnson. Jurat omitted in printing.

[fol. 174] IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

In the matter of the application of RUDOLPH SCHWARE for admission to the bar of the State of New Mexico.

PETITION AND AFFIDAVIT TO TAKE BAR EXAMINATION—
Filed January 4, 1954

To the Honorable Chief Justice and Justices of the Supreme Court of the State of New Mexico:

Pursuant to the rules which are applicable I hereby respectfully petition your honorable Court for an order admitting me to practice law in all the courts of the State of New Mexico.

* Permission is respectfully requested to take the bar examination to be held in Santa Fe, New Mexico, on February 22, 1954.

*Strike the language which is not applicable. Use typewriter in filling all blanks.

Application fee in the sum of \$75.00 is enclosed herewith.

I will appear at the next meeting of the Board of Bar Examiners and report to the secretary thereof in the office of the Clerk of the Supreme Court, Supreme Court Building, Santa Fe, New Mexico, at 8:30 o'clock A. M. on Feb. 22, 1954 (See Paragraph 1, Rule III.)

My address is 841 Madeira Drive, S. E., Albuquerque, New Mexico.

As exhibits to this petition I am attaching: (See Par. 7, and 8 of Rule II and Par. 3 of Rule IV.)

Material facts in support of this petition are shown by my answers to the following questionnaire.

(Instructions to the Applicant—All statements are to be based on your own knowledge unless the statement is expressly qualified to show the source of your information. Answer all questions and make your answers as specific as possible. If the space for any answer is insufficient, you may complete your answer on a separate attached sheet.)

1. State:

(a) Full name: Rudolph Schwärz.

(b) Have you ever been known by any other name or surname? Yes; if so state and give details: See attached Sheet, Page 1.

(c) Are you a citizen of the United States? Yes.

2. Date and place of birth: January 23, 1914; New York, N. Y. Age: 39.

3. State every residence you have had since you were sixteen years of age.

City and State, Street No., From (Mo. and Yr.), To (Mo. and Yr.). See attached sheet, Page 2.

4. (a) Give the date when, and the address where, you established residence in New Mexico. July 17, 1950 at Schwartzman Apts., South 2nd St., Albuquerque.

(b) State the address of each place in New Mexico where you have lived since that date and the period of residence at each address giving the day, month and year in each instance. From July 17, 1950 to Sept. 14, 1950 at Schwartzman Apts., South 2nd Street, Albuquerque; from Sept. 15, 1950 to the present at 841 Madeira Drive, S. E., Albuquerque.

(c) If you have been absent from the State of New Mexico since first establishing residence state the time of each absence giving day of month and year: None.

5. My education was received as follows:

(a) High School (Name, location): DeWitt Clinton, Bronx, New York.

Dates of attendance: From 1928 to 1932.

(b) College or University other than law study (Name, location):

Dates of attendance: From To

(If you did not attend a college, so state) See attached sheet, page 3 (C).

Degrees: When

(c) Law Study:

Law Schools (Name, location): University of New Mexico, College of Law, Albuquerque, New Mexico.

Dates of attendance: From September, 1950 to January, 1954.

Degrees: (What degrees and dates)

I expect to complete the requirements for degree of Bachelor of Laws in January, 1954.

(d) Law Office Study:

Dates: From To None.

6. Make a complete statement of your practice of law since first being admitted to practice in any jurisdiction. Include temporary or part-time work. State as to each employment or period of private practice:

(a) The periods during which you were employed as an attorney or engaged in private practice with the dates.

(b) The exact addresses of the offices or places at which you were so employed or engaged and the names and present address of all such former employers, partners or associates, if any.

(c) The nature and extent of your duties or practice.

(d) The reason for the termination of each employment or period of private practice.

7. Make a complete statement of all employments you have had or business or occupations in which you have been engaged on your own account, since you became sixteen years of age, other than as set forth in question 6. Include temporary or part-time work. State as to each employment, business, or other occupation:

- (a) The periods during which you were so employed or engaged with the dates.
- (b) The exact addresses of the offices or places at which you were so employed or engaged with the names and present addresses of all such former employers, partners or associates in business, if any.
- (c) The position held by you.
- (d) The reason for the termination of each employment, business or other occupation. See attached sheet, (D), pages 3, 4, 5.

[fol. 175] 8. Have you ever held any judicial office? Give facts: No.

9. (a) Have you ever held a license, other than as an attorney at law, the procurement of which required proof of good character (i.e., certified public accountant, patent attorney, real estate broker, etc.)? Yes.

(b) As to each license, state the date it was granted, and the name and address of the authority issuing it. See attached sheet, (E), page 6.

(c) State every application presented and examination taken by you for a license granted by the state or for an official position, the procurement of which required proof of good character. (Specify all examinations whether or not you were successful. Specify every application presented including applications for reinstatement and withdrawn applications and whether or not they were granted.) State as to each application the date, the name and address of the authority to whom it was addressed, and the disposition made of it, with the reasons therefor, and as to each examination the result thereof. None.

10. Name all jurisdictions and courts in which you have been admitted to practice law. Give dates of admission to practice. None.

11. State every application for admission to the bar by you EXCEPT those covered by your answer to question 10. None.

12. Have you been entitled to practice in each of the locations specified under question 10 and before each court continuously from the date you first became so entitled until the date hereof? If not, state the dates during which you have not been so entitled, the nature of the disqualification, the facts, and the name and address of the person or body in possession of the record thereof. No.

13. Have you been disbarred, suspended from practice, reprimanded, censured, or otherwise disciplined as an attorney or member of any profession or organization, or holder of any office, or have any charges ever been made or filed or proceedings instituted against you?

If so, state the dates, the facts, the disposition of the matter, and the name and address of the authority in possession of the record thereof. No.

14. If you have been previously admitted to the bar, state the exact names and locations of courts before which your former practice of law was chiefly conducted. Name — Location —.

15. Have you ever held a bonded position? Yes.

If so, specify nature of position, dates, amount of bond and whether or not anyone ever sought to recover upon your bond or to cancel the same. State facts fully, including the name of the bonding company, if any. See attached sheet, (F), page 6.

16. Were you ever dropped, suspended, or expelled from school or college? Yes. If so, state facts fully. See attached sheet, (G), page 6.

17. (a) Have you ever been a party to or had or claimed any interest in any civil proceedings? Yes.

(b) Have you ever been charged with or arrested for a violation of any law? Yes.

(c) Have you ever been charged with fraud, formally or informally, in any civil proceeding? No.

(d) Have you ever been declared a ward of any court? No.

(e) Have you ever been adjudicated an incompetent person, an insane person or a lunatic by any court? No.

Give full details for (a), (b), (c), (d), and (e), including dates, the court if any, reference to the court record if any, the facts, the disposition of the matter; and if no court records are available, give to the best of your ability the names and addresses of all persons involved, including counsel. Re: (a). See attached sheet, pages 7, 8. Re: (b). See attached sheet, page 9.

18. Are there any unsatisfied judgments against you?
No.

If so, state the same, giving names and addresses of creditors, amounts, dates and nature of judgment.

19. State names and addresses of three persons in each locality where you practiced law with whom you are personally acquainted. (If you have not practiced previously, give the same information for each locality in which you have lived.) Name _____ Address _____

Name _____ Address _____
Occupation _____

20. Give the names and addresses of three attorneys and two clients who know you. These should be other than those supporting your application or named above. (If you have not practiced previously, give the names of law school professors, etc.) Name Address
Occupation

21. Give the name and location of each bar association of which you are or have ever been a member.

STATE OF NEW MEXICO,

County of Bernalillo, ss.:

Rudolph Schwae, being duly sworn, says: I have read the foregoing questions and have answered the same fully and frankly. The answers are complete and are true of my own knowledge.

(S.) Rudolph Schware, (Seal)

Subscribed and sworn to before me this 18th day of December, A. D. 1953. Notary Public. (S.) Cecil E. Young, My Commission expires April 16, 1955.

[fol. 176] IN THE SUPREME COURT OF THE STATE
OF NEW MEXICO

No. _____

In the Matter of the Application of RUDOLPH SCHWARE for
Admission to the Bar of the STATE OF NEW MEXICO

A

Re: 1 (b).

In September, 1933, I went to work in a pocketbook factory located at Middletown, New York. I wanted to organize the employees into a union. Because a large number of employees were Italian, I was of the opinion that union organization work would be facilitated if I adopted an alias.

I used the alias, Rudolph De Caprio while employed at this factory. When the workers were organized into a Local Union affiliated with the American Federation of Labor, I left for my home in New York City and resumed use of my real name.

The following year, 1934, I left New York City to take up residence in California. During the entire period of my residence in that state, from 1934 until 1937, I again used the alias, Rudolph De Caprio.

During the maritime strike in 1934 I was arrested on a number of occasions and was booked under the alias of Joe Fliari.

[fol. 177]

B

Re: 3.

To the best of my knowledge and belief I have lived in the following cities. Where addresses are not given, it is only because I cannot remember them.

City and State	Street No.	From	To
1. Bronx, New York	Amalgamated Co-operative Apts., Apt. P 3	Jan. 1930	June 1933
2. Middletown, New York	Unknown	Sept. 1933	Nov. 1933
3. Bronx, New York	Amalgamated Co-operative Apts., Apt. P 3	Nov. 1933	Feb. 1934
4. Los Angeles, California	Westerly Terrace	Feb. 1934	Mar. 1934
5. San Pedro, California	Unknown	Mar. 1934	Mar. 1936
6. San Francisco, California	Unknown	Apr. 1936	Oct. 1936
7. Berkely, California	Unknown	Nov. 1936	Feb. 1937
8. Bronx, New York	Amalgamated Co-operative Apts., Apt. P 3	Feb. 1937	May 1937
9. Chicago, Illinois	Unknown	May 1937	Sept. 1937
10. Rio Hondo, Texas	Unknown	Sept. 1937	Nov. 1937
11. Detroit, Michigan	Unknown	Nov. 1937	June 1940
12. South Bend, Indiana	Unknown	June 1941	Nov. 1941
13. South Bend, Indiana	129 So. Carroll Street	Oct. 1941	July 1942
14. South Bend, Indiana	Unknown	July 1942	Jan. 1943
15. U. S. Army	2222 Longley Avenue	Jan. 1943	Feb. 1946
16. South Bend, Indiana	738 Stockbridge Avenue	Mar. 1946	Mar. 1949
17. Kalamazoo, Michigan	Schwartzman Apts.	Apr. 1949	June 1950
18. Albuquerque, New Mexico	South 2nd Street	July 1950	Sept. 1950
19. Albuquerque, New Mexico	841 Madeira Dr. SE	Sept. 1950	Still there

[fol. 178]

C

Re: 5 (b).

1. City College of New York, New York, New York.
From February 1932 to March 1932.

2. Western Michigan College of Education, Kalamazoo, Michigan. From September 1948 to June 1950.

D

Re: 7.

To the best of my knowledge and belief the following is a true statement of my employment. I do know that there are certain gaps in employment which I cannot recall. There were also periods in which I was unemployed.

1. 1930 to 1932, while attending High School, I had part time employment delivering milk in the mornings. I do not recall the name of the company for which I worked. Deliveries were made in the Amalgamated Cooperative Apartment Houses in the Bronx, New York. Quit.

2. 1930 to 1932, while attending High School, I worked in a produce store after school hours, on Saturdays and Sundays full time. I do not recall the name of the store or the owner. Quit.

3. 1932 to 1933. I was employed part time in Columbia University Library, New York City. I believe I was laid off for economy reasons.

4. June to September, 1933. I was employed as a chauffeur at a summer resort hotel in the vicinity of Monticello, New York. I cannot recall the name of the hotel. Laid off at the end of the season.

[fol. 179] 5. September to November 1933. I was employed in a pocketbook factory in Middletown, New York. I cannot recall the name of the factory. I worked under the alias of Rudolph Di Caprio. I did not return to work when the strike ended.

6. March, 1934 to November, 1935. I was employed as a machinist's helper at Bethlehem Shipbuilding Company, Terminal Island, San Pedro, California, under the alias of Randolph Di Caprio. I do not recall the names of my superiors. I left this work in order to join the merchant marine.

7. December, 1935 to April, 1936. Shipped out as an ordinary seaman on a freighter. I do not recall the name of the ship but believe I worked for the Calmar Line under the alias of Rudolph DiCaprio. I left this employment to sail on a steam schooner plying the Pacific Coast. I quit because I finally realized my place was not sailing the high seas but on land.

8. April, 1936 to February, 1937. I was employed part time as a longshoreman and a warehouseman, under the alias of Rudolph Di Caprio, on the docks in San Francisco, Oakland and Berkeley. I left because my father died and returned to New York City.

9. May, 1937 to September 1937. I was employed part time in a small grocery store. Left because I could not earn enough. I cannot recall the name of the store or the owner.

10. September, 1937 to November, 1937. I was employed at 20¢ an hour in a vegetable processing plant in Rio Hondo, Texas. I do not recall the name of the plant or the owner.

11. March, 1938 to February, 1940. I was employed as Secretary of the Wayne County Workers Alliance. The

offices were located on Grand River Avenue in Detroit, Michigan.

[fol. 180] 12. February, 1940 to June, 1940. I was employed as State Secretary of the Michigan Workers Alliance. The offices were located on Grand River Avenue in Detroit, Michigan. I voluntarily terminated my employment because of basic disagreements as to policy.

13. Part of the time, see #12, supra, I was employed on the W. P. A.

14. From June, 1940 to June, 1941. I was self employed doing odd jobs and unemployed part of the time.

15. June, 1941 to November, 1941. Employed as a tow bar driver by Caravan's, Inc., Studebaker Corporation, South Bend, Indiana. Firm went out of business when the 1942 car production was halted.

16. February, 1942 to January, 1943. I was employed as a truck driver by Fitterling Transportation Co., Homer W. Fitterling, owner, offices at 430 South Carroll Street, South Bend, Indiana. I left to go into the service.

17. January, 1943 to February, 1946. U. S. Army. Honorably discharged.

18. March, 1946 to May, 1946. Employed as a truck driver by Shipper's Dispatch, Inc., offices at 1216 West Sample Street, South Bend, Indiana. I do not recall the name of the owner. I left in order to go into business for myself.

19. May, 1946 to the present. Self employed as owner of the Advance Sales Company, main line of business the sale of venetian blinds, present address, 841 Madeira Drive, S. E., Albuquerque, New Mexico.

[fol. 181-183]

E

Re: 9 (b).

Real Estate Broker's License, issued by the New Mexico Real Estate Board, 105 Fourth Street, S. W., Albuquerque, New Mexico. First issued approximately June 1, 1951 and subsequently renewed yearly on January 12, 1952 and January 1, 1953.

F

Re: 15.

I am bonded as a licensed real estate broker in the amount of \$1,500.00. The bond is handled by the Bender and Padon Insurance Agency, 5005, Central Avenue, N.E., Albuquerque, New Mexico. No one has ever sought to recover on my bond and no bonding company has ever sought to cancel same. The bond has been in effect continuously since June 1, 1951.

G

Re: 16.

1. In my senior year in De Witt Clinton High School, I was suspended for a period of approximately three days for refusing to give up membership in one of the high school clubs whose slate in the school elections had won.

2. I dropped out of City College of New York, New York, New York, because of financial reasons, without completing the first semester. I do not know whether or not I was suspended from the rolls.

* * * * *

[fol. 184] Re: 17 (b).

1. In 1934, I cannot recall the exact dates, I was arrested on several occasions during the maritime strike of that year. I was booked under the alias of Joe Fliari on a charge of "Suspicion of criminal syndicalism". I never appeared before a judge. On one occasion I was detained in the San Pedro jail for approximately five days although the authorities were not supposed to be able to hold you on this charge for more than seventy hours. I was not represented by counsel. I believe the record of these arrests can be found in the San Pedro courthouse.

2. On February 6, 1940, I was arrested in Detroit, Michigan, by members of the Federal Bureau of Investigation. I had been indicted by a Federal Grand Jury on charges of violating a law passed in 1812 which made it a crime to recruit soldiers for a foreign country in the United States. Specifically I was charged with recruiting soldiers for the legal Spanish Republican government to fight against Gen-

eral Franco and his German and Italian allies during the Spanish Civil War. I was lodged in the Milan Federal Penitentiary for a period of ten (10) days. I was released because the United States government decided to nolle pros the charges. I was represented by counsel from Maurice Sugar's office in Detroit, Michigan.

3. Sometime in 1940 or 1941, I cannot remember the exact date or even the name of the town in Texas where the event occurred I was arrested on a charge of "suspicion of transporting a stolen vehicle". I had been asked to pick up a car which had been damaged and deliver the same to the owner in Los Angeles, California. I had all the papers in my possession which showed my agency for the owner. After seventy hours incarceration I was finally released. During this entire time the authorities refused to allow me to contact the owner of the vehicle even though they knew who he was. A Kangaroo Court was conducted in the jail and the other inmates attempted to get my funds away from me without success.

4. Although I have been arrested on a number of occasions I have never been convicted of any crime. During the 1934 maritime strike hundreds of strikers were similarly arrested.

[fol. 184A-191] IN SUPREME COURT OF NEW MEXICO

APPLICATION FOR CHARACTER REPORT

I, Rudolph Schware, hereby apply for a character report in connection with my application for admission to practice law in the State of New Mexico. I understand that I will not receive and am not entitled to a copy of the report nor to know its contents. I agree to give any further information which may be required in reference to my past record and consent to having this investigation made and such information as may be received reported to the examining authority.

(S.) Rudolph Schware, 841 Madeira Drive, S. E.,
5-7346, Albuquerque, New Mexico.

[fol. 192] IN SUPREME COURT OF NEW MEXICO

OPINION

McGhee, J.

This matter is before us on a pleading we treat as a petition to review the action of the State Board of Bar Examiners in denying the application of Rudolph Schware to take the examination for admission to practice law in this state.

In December, 1953, the petitioner applied for leave to take the bar examination in February, 1954. He was advised by letter that he would be entitled to do so. When he presented himself for examination he was interviewed by the Board of Bar Examiners. No transcript was made of this interview, but at its close the following action was taken by the board:

"No. 1309, Rudolph Schware. It is moved by Board Member Frank Andrews that the application of Rudolph Schware to take the bar examination be denied for the reason that, taking into consideration the use of aliases by the applicant, his former connection with subversive organizations, and his record of arrests, he has failed to satisfy the Board as to the requisite moral character for admission to the Bar of New Mexico. Whereupon said motion is duly seconded by Board Member Ross L. Malone, and unanimously passed."

A second hearing was held before the board on July 16, 1954, and transcript made thereof. At the conclusion of this hearing the board was of the unanimous opinion the former determination should stand.

It is agreed by all that this court has plenary jurisdiction to review the decision of the board. *In re Gibson*, 35 N. M. 550, 4 P. 2d 643 (1931); *In re Royall*, 33 N. M. 386, 268 P. 570 (1928). In such review this court is not limited by appellate rules, but the matter is considered originally.

The substance of petitioner's argument is made under two points, the first of which is: The right to practice law is a property right protected by the Fifth and Fourteenth

[fol. 193] Amendments of the Constitution of the United States. Under this point reference is made to the cases of *Ex Parte Garland*, 71 U. S. 333, 18 L. Ed. 366 (1866), and *Cummings v. The State of Missouri*, 71 U. S. 277, 18 L. Ed. 356 (1866). In the latter case it is said:

*** * We do not agree with the counsel of Missouri that 'to punish one is to deprive him of life, liberty, or property, and that to take from him anything less than these is no punishment at all.' The learned counsel does not use these terms—life, liberty, and property—as comprehending every right known to the law. He does not include under liberty freedom from outrage on the feelings as well as restraints on the person. He does not include under property those estates which one may acquire in professions, though they are often the source of the highest emoluments and honors. The deprivation of any right, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact. ***

It is not necessary to class membership in the legal profession with ownership of real estate or other tangible article in order to recognize an individual has a right therein. We regard as inutile an attempt to categorize it at all. But, granting that such membership is a species of property, as that word is employed in the Constitution, it does not follow, and we do not take it as contended by petitioner, that the right to its enjoyment is absolute and unfettered by any mode of regulation.

In an annotation in 98 L. Ed. 851, at p. 852, substantive due process in its application to the type of property with which we are here concerned is described in the following language:

[fol. 194] "Substantive due process of law may be roughly defined as the constitutional guaranty that no person will be deprived of his life, liberty, or property for arbitrary reasons. Such a deprivation is constitutionally supportable only if the conduct from which the deprivation flows is proscribed by reason-

able legislation (that is, legislation the enactment of which is within the scope of legislative authority), reasonably applied (that is, applied for a purpose consonant with the purpose of the legislation itself)."

The Board acted under Rule III of the Rules Governing Admission to the Bar of New Mexico, which provides, "that the Board of Bar Examiners may decline to permit any such applicant to take the (bar) examination when not satisfied of his good moral character." We do not see how this requirement, which in the same or similar language is universal in this country so far as we know (Anno: 72 A. L. R. 929), can seriously be challenged as unreasonable.

Judge Cardozo has this to say of the requirement of good moral character upon admission to the bar, and afterward:

"Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. * * * (Citing cases.) Whenever the condition is broken the privilege is lost. To refuse admission to an unworthy applicant is not to punish him for past offenses. The examination into character, like the examination into learning, is merely a test of fitness. * * * In re Rouss, 221 N. Y. 81, 116 N. E. 782 (1917).

The cases are numerous too, which hold that by asking admission into the legal profession an applicant places his good moral character directly in issue and bears the burden of proof as to that issue. Spears v. State Bar, 211 Cal. 183, [fol. 195] 294 P. 697, 72 A. L. R. 923 (1930); In re Wells, 174 Cal. 467, 163 P. 657 (1917); Rosencranz v. Tidrington, 193 Ind. 472, 141 N. E. 58, 28 A. L. R. 1136 (1923); In re Weinstein, 150 Or. 1, 42 P. 2d 744 (1935).

Thus we are brought up to the controverted, substantial question before us of whether the petitioner has produced proof of his good moral character so as to entitle him to take the examination for membership in the bar of this state, as contended by him under his second point.

An examination of this sort is concerned ultimately with the subjective character of the individual. Character cannot be laid upon a table, so we must resort to two kinds of indirect evidence: First, the pattern of conduct an individual follows, and, second, a consideration of the regard his fellows and associates have for him. This investigatory technique can, at best, but dimly throw into relief the architecture of character; still, it is all we have. In this particular inquiry the technique leads us through petitioner's own disclosures to behavior which cannot be severed from a social ideology which now stands athwart so much of the Eastern World dividing men from men—Communism.

The legal status of the Communist Party in the United States is far different today from that which obtained during the years of the Depression and following, when petitioner was a member of it. He calls our attention to the fact that as late as 1948 the Communist Party was a recognized political party and had candidates for the Presidency of the United States every four years up to and including [fol. 196] 1948. We do not overlook the fact that during the years petitioner was a member of the Young Communist League and the Communist Party, from 1932 to 1940, such membership was not unlawful. But that fact does not restrain us from examining his former associations and actions, including his arrests and his use of aliases, and his present attitude toward those matters, as contained in his statements to the board, in order to arrive at a conclusion as to his character. As said in *Communications Assn. v. Douds*, 339 U. S. 382, 411, 94 L. Ed. 925, 70 S. Ct. 674 (1950), "the state of a man's mind must be inferred from the things he says or does."

It is generally held that an inquiry into character preceding admission to the bar is different from the inquiry had upon proceedings to disbar. This is already exemplified in part by our earlier reference to the rule that an applicant bears the burden of proof of good character. It is also to be noted in the scope of inquiry. It is said in *In re Wells, supra*:

"* * * In a proceeding to disbar an attorney the burden is on the accuser to prove moral turpitude."

The requirement on his admission is to prevent the accrediting of untrustworthy persons as fit to receive the confidence attending upon the relation of attorney and client. The inquiry may extend to his general character as well as to particular acts. It is broader in its scope than that in a disbarment proceeding. The court may receive any evidence which tends to show his character for honesty, integrity, and general morality, and may no doubt refuse admission upon proofs that might not establish his guilt of any of the acts declared to be causes for disbarment."

Similarly, in *In re Farmer*, 191 N. C. 235, 131 S. E. 661 (1926), we find this statement:

[fol. 197] "This 'upright character,' prescribed by the statute, as a condition precedent to the applicant's right to receive license to practice law in North Carolina, and of which he must, in addition to other requisites, satisfy the court, includes all the elements necessary to make up such a character. It is something more than an absence of bad character. It is the good name which the applicant has acquired, or should have acquired, through association with his fellows. It means that he must have conducted himself as a man of upright character ordinarily would, should, or does. Such character expresses itself, not in negatives nor in following the line of least resistance, but quite often in the will to do the unpleasant thing if it is right, and the resolve not to do the pleasant thing if it is wrong. * * * *

Before proceeding to examine the record as to the matters assigned by the board for its refusal to endorse the petitioner, "the use of aliases by the applicant, his former connection with subversive organizations, and his record of arrests", it should be stated that only one member of this court has looked at the contents of what might be termed the "confidential file", which contains answers to inquiries which the bar examiners cause to be mailed out regarding applicants who have not theretofore practiced law, the answers being returned to the clerk of this court, who is also the secretary of the Board of Bar Examiners.

That member is the Honorable H. A. Kiker. In making this statement the writer and the remainder of the court do not intend that any reflection should be cast upon that justice in his examination of materials not made available to the petitioner. The statement is made for the sole purpose of advising petitioner that, regardless of whether this court has power to examine and rely upon "confidential" information about an applicant for admission to the bar, on which question we make no pronouncement, its members, with the single exception noted, have chosen not to do so. Also, at the oral argument here, and in its response and brief, the board disclaims having based its decision upon such information.

As the facts before us are the history of a man, they are best stated in narrative form.

The petitioner was born in New York in 1914. His father was a needles trade worker, an immigrant, a poor man and a socialist. Petitioner began work at the age of nine and continued part-time work during his school years. He attended DeWitt Clinton High School in the Bronx, New York, from 1928 to 1932. In 1932, at the age of eighteen, he joined the Young Communist League. This association arose out of the following circumstances, as described by petitioner:

"Well, I was going to High School and a fellow I was playing handball with during school hours when we used to get an hour off told me that he had written a letter to the school newspaper dealing with the question of unemployment in the United States, that the editors of the school paper wanted to publish it but that the faculty adviser refused to allow it to be published and he said that there was a club on the campus which dealt with problems such as that and asked me to attend one of the meetings. Well, I attended one of the meetings of the club and I found out that what he'd told me was true. I thought that freedom of the press was important, I was approximately eighteen years old at the time, and I attended meetings of the club whenever I could, which wasn't too often. The club ran candidates in the school elections. This was just prior to my graduation and they had a—the plat-

form called for lower prices in the school lunch room and stuff like that and our candidates won the election.

"It was after the election that the principal called all the members of the club into his office and our faculty adviser and told us that because of the way that the campaign had been conducted that we would have to disband the club. Now I know that right after we won [fol. 199] the election they lowered the price of a glass of milk in the school lunch rooms from five cents to three cents and other foods correspondingly.

"There were a number of people who belonged to the club who belonged to various political organizations, the main ones were the Young Peoples Socialist League, that had about approximately eight or nine members and there were four who belonged to the Young Communist League. To my dying day I will never forget, we were in the principal's office and the principal says, you either—you have to disband the club or else stand suspended. And the leader of the Young Peoples Socialist League got up and he said, 'Seeing as how you put it that way, I acquiesce.' I never knew what that word meant until I looked it up. He meant to say, 'I acquiesce.'

"There were five people who refused to disband. Four of them were members of the Young Communist League, and myself. I thought it was wrong for the club to have to disband and it set me to thinking—I'd been raised in the socialist atmosphere—why was it when a test came, you've got to realize I was eighteen years at the time—when the test came why was it that the socialists had backed down and the Communists had stood up and I thought and thought and finally my—over the objections of my family—an invitation was given to me to join the Young Communist League and I joined the Young Communist League. It was a few years later that I joined the Communist party."

In connection with the refusal to disband the club, petitioner was suspended from school for about three days.

Petitioner joined the Communist Party in 1934 at the age of twenty.

In 1933 petitioner was employed in a pocketbook factory

in Gloversville, New York. For the first time he used an alias. In his written application to take the bar examination he stated with regard to the alias:

"I wanted to organize the employees into a union. Because a large number of employees were Italian, I was of the opinion that union organization work would be facilitated if I adopted an alias. I used the alias Rudolph de Caprio while employed at this factory. When the workers were organized into a Local Union affiliated with the American Federation of Labor, I left for my home in New York City and resumed use of my real name."

[fol. 200] At the July, 1954, hearing, the petitioner said of the use of this alias:

"A. Well, I worked in Monticello, New York, in a hotel driving as their chauffeur and then when the work slacked—when the hotel closed down for the summer season, on the way into New York there is a town called Gloversville and had a large Italian population and practically all the people working in the factory there were Italians and in order to get a job to earn a living I changed my name from a Jewish to an Italian name and kept the same first name and was able to get a job."

Q. Was that the first time that you ever used an alias?

A. Yes.

Q. Was the sole purpose for that to gain employment?

A. Yes."

From February, 1934, to February, 1937, petitioner lived in Los Angeles, San Pedro, San Francisco and Berkeley, California, where he was employed in shipyard work, as a longshoreman and warehouseman, and part of the time as a seaman. During this period he used the alias Rudolph De Caprio.

During the maritime strike in 1934 petitioner was ar-

rested a number of times and was booked under the alias of Joe Fliari, or Fiori.

Of his use of the alias, Rudolph De Caprio in California, petitioner testified at the hearing before the board:

"Q. Why did you use the name in the shipyard?

A. The same reason, I don't know of any and I never did find any Jewish person who is working in the shipyard.

Q. Was the use of the name solely to obtain employment?

[fol. 201] A. Yes.

Q. Was there any intention to deceive anyone?

A. No."

When it was called to petitioner's attention that he had explained the original use of an alias on the basis that he would be more effective as a labor organizer in organizing workers of Italian extraction, and that at the hearing he explained the use of aliases as solely for the purpose of obtaining employment, he testified he used the aliases for both reasons.

On his use of the alias Joe Fliari, or Joe Fiori, upon his arrests, and of the circumstances of the arrests, petitioner testified:

"Q. Did you ever on any other occasion use an alias?

Q. Yes, a number of times, I believe it was two. I have tried to check with the Los Angeles Police Department and made a trip to California purposely to get the information, because the information was refused to be supplied to me by mail, to find out how many times I'd been arrested in San Pedro, California. I know definitely that I was arrested twice and this was in the course of a strike and while I was in San Pedro I went through the files of the San Pedro Newspaper and found that there were approximately two to 3,000 people arrested in the course of about 66 days, approximately, over 200 on a charge of suspicion of criminal syndicalism.

(Discussion off the record.)

Q. You were speaking about the arrest of approxi-

mately two or 3,000 people during the strikes at San Pedro, California, were you arrested at that time?

A. Yes, I—to the best—

Q. First let's stay with the name, what name were you working under in the shipyard?

[fol. 202] A. Rudy DiCaprio.

Q. And how many times were you arrested during the course of that strike?

A. To the best of my knowledge and belief twice.

Q. At that time it was—

A. Criminal syndicalism.

Q. Is that a state or federal?

A. State.

Q. What is criminal syndicalism, if you know?

A. Well, there is a statute which defines criminal syndicalism as a person—as the commission of an act in which somebody attempts to overthrow or subvert the state government, essentially that is what it is.

Q. Were you ever tried on this charge?

A. No, I was never tried on the charge.

Q. Were the charges dismissed?

A. I assume so, I was never brought before a judge, I was kept in jail, I remember one time 72 hours and then released and the second time I remember I was in jail approximately five days and read in the paper on the 3rd day that I'd been released but that I was still in jail but I'd never been brought before a judge and was released.

Q. And now sticking with the use of names, you have testified that you used the name of DiCaprio at Gloversville, New York, and at San Pedro, did you use any other alias at any time up until 1940?

A. Well, as I said, when I was arrested I used the alias of Joe Fiori.

Q. Was that in connection with employment or just a name that you assumed to give to the police?

A. A name that I assumed to give to the police, I suppose, it is a long time ago, I suppose I thought, well, if the company knew that I'd been arrested it was possible that I wouldn't be able to go back to work.

[fol. 203] Q. There was no question of your identity with the police since they had you in person?

A. No, no.

Q. They had you regardless of what your name was?

A. That is correct.

Q. And did you obtain any monetary benefit as a result of that name?

A. None whatsoever."

In the Communist Party petitioner used either the name Rudy DeCaprio or Joe Fiori. He could not recall which one.

In February, 1937, petitioner's father died and he returned to New York. At this time he left the Communist Party. He described this break with the Party as follows:

"Q. You say you left the Communist party in 1940. Would you tell the Committee in your own words the reason why you left.

A. Well, I'd left the Communist party once before in 1937, I believe, when my father died. I left California and went back home to New York. I dropped out of the Communist party then and that was the time when I assumed my rightful name and said to myself, why are you ashamed to be known as Rudolph Schware, the son of your father. * * * *

In the years between May of 1937 and January of 1943, petitioner worked for a short time in Chicago, then in Texas at a vegetable processing plant, then in Indianapolis picking corn. He was intermittently hitch-hiking and looking for work, and finally came to Detroit. He testified as to the time spent in Detroit as follows:

"* * * I was single at the time and the relief that the City of Detroit gave for single men was this place called Fisher Lodge, approximately 2,000, 3,000 people, and food was about as much as the city could afford at [fol. 204] that time and I was instrumental in helping to organize an organization in this lodge so that we could get better food and perhaps able to get jobs as a result of that."

In Detroit he was again approached to rejoin the Communist Party, which he did. He states of this reaffiliation:

*** * * my disillusionment had been going on and then you had in 1939, I believe it was, you had your Stalin-Hitler pact which began to raise a lot of questions in my mind and then in 1940 I began to see. At that time I was the State Secretary of the Michigan Workers Alliance and I began to see that the Communist party wasn't interested so much, those beautiful words wasn't so much that but a struggle for power on the part of a few individuals that they wanted the power and they didn't care what happened to the other people. Of course, I was a lot older then, I was a lot older then, too, and I'd been questioning and questioning for quite some time and finally I made the events reach the stage where the party organization was trying to say how the organization of which I was the elected secretary should be run, not for the benefit of the organization, that is when I reached the final decision, you and I part ways and I left."

Petitioner was arrested in Detroit in 1940 in connection with the Neutrality Act of 1939, when he was engaged in obtaining recruits to oppose Franco's forces in the Spanish Civil War. He had himself volunteered to go to Spain to fight, but was unsuccessful in getting passage there. He states of this arrest:

"Q. * * * I want to inquire whether or not you knew at that time that you were engaged in these recruiting activities that there was any question as to their legality?

A. No, I had no knowledge whatever that I was violating a law. There was no knowledge whatsoever.

Q. Was the recruiting being conducted openly or surreptitiously?

A. Quite openly. Everybody knew that I, myself and the people in my organization and in the surroundings that I was traveling in at that time, everybody [fol. 205] knew, for instance, that I, myself, had volunteered to go to Spain but I had no knowledge what-

soever that I was breaking any law. Of course, I had read history and known of during the American Revolution people coming over from Europe to help our fight here, before we became a nation."

The charges under which he was arrested in Detroit were terminated by nolle prosequi failed on behalf of the government.

From 1940 to 1943 the petitioner had scattered employment, working part of the time as a truck driver. He was arrested in 1940 or 1941 in a town in Texas, the name of which he could not recall, on a charge of "suspicion of transporting a stolen vehicle." He stated he was driving the car to California for a friend and after being held while the police presumably inquired into the ownership of the car and his right to possession of it, he was released.

In response to a question in petitioner's written application to take the bar examination asking that he state every residence he had had since he was sixteen years of age, and indicating the name of the city and state, the street address and the period of time by month and year of each separate residence were to be given, petitioner stated that he had had ten different residences during the period March, 1934 to January, 1943, the latter date being the time he was inducted into the United States Army. He lived in California, New York, Illinois, Texas, Michigan and Indiana. He could recall only two street addresses. One was the home of his family in New York where he spent three months in 1937; the other was an address in South Bend, Indiana, where he lived approximately two years.

Another question on petitioner's application form sought [fol. 206] information as to all employments he had had since the age of sixteen years, specifically asking for the time periods of such employment, exact addresses of offices or places where employed and the names and present addresses of all former employers. From March, 1934, to November, 1935, petitioner was employed as a machinist's helper at Bethlehem Shipbuilding Company, Terminal Island, San Pedro, California. He could not recall the names of his superiors. He left there to join the merchant marine.

He then spent five months as a seaman, first on a freighter. He could not recall the name of the ship, but believed he worked for the Calmar Line, making no statement as to the whereabouts of its offices. Then he left that employment to sail on a steam schooner plying the Pacific Coast. He made no statement as to the name of his employer, or otherwise identified the schooner. After that he worked ten months as a longshoreman on the docks in San Francisco, Oakland and Berkeley, California. Then, after a trip to New York at the time of his father's death he worked in a grocery store for some four months. He could not recall the name of the store or the owner. He worked two months in a vegetable processing plant in Rio Hondo, Texas. He could not recall the name of the plant or the owner.

The application states that from March, 1938 to June, 1940, he was in Detroit working with the Wayne County Workers Alliance and the Michigan Workers Alliance. The offices were located on Grand River Avenue. He gives no names of associates. Upon leaving this work he was unemployed for a while and then became regularly employed as a truck driver in South Bend, Indiana for about [fol. 207] two and a half years. One company for which he worked went out of business when the 1942 car production was halted. He gives the name of the company, the owner and the office address of his last employer in South Bend, which corresponds with the period of time for which he had given a residence address as earlier noted. This brought him up to the time when he was inducted into the army.

The summation of all this is that for approximately nine years petitioner has provided only one residence address other than the home of his parents in New York. Over that period he has given only one personal name of an employer, for whom he also gave a completed street address in South Bend, Indiana, and only the street name for the location of the two Workers Alliances he was connected with in Detroit. This adds up to only slightly more than a complete blank. If it were not for the fact that petitioner had such a tenuous existence during those years, his inability to recall with more definiteness the location of his

residences and the names and locations of his employers would be entirely void of explanation.

Petitioner was drafted into the Army in January, 1944, and served until 1946, when he was honorably discharged. He lived in South Bend, Indiana from 1946 to 1950, during which time he was self-employed in the sale of venetian blinds and also attended Western Michigan College.

In 1950 he enrolled in the Law School of the University of New Mexico. He discussed with the dean of that school his former affiliation with the Communist Party. When questioned by one of the bar examiners at the hearing as [fol. 208] to whether it had ever occurred to him that his experience and membership in the Communist Party and his activities in that organization would affect him in his ability to be admitted to the bar, he stated:

"A. Well, I'd classify that under the heading of a calculated risk. In other words, we knew that there was a possibility that I would not be permitted to take the exam. On the other hand, we also knew that these are things that took place when I was a young person . . . I was expecting that you gentlemen will say that we have to hold a hearing on your case, Mr. Schware. Frankly that is what I expected."

Petitioner married in 1944. He has two children. Nine letters which he wrote to his wife while in the armed services in 1944 were offered by him in evidence as corroborative of his claim to be converted from Communism and to be of good moral character. The Rabbi of a synagogue in Albuquerque testified the petitioner was a member of his congregation in good standing, that his children received religious training.

While in law school petitioner established an anonymous scholarship of \$50.00 a year to be given to needy law students, which he has continued and hopes to continue indefinitely.

Some seventeen letters from law professors and students and business associates were introduced into the record stating that petitioner is a person of good moral character, these letters being from persons who have known the petitioner in New Mexico.

Burdensome though it be to the reader, there is still more of the record of petitioner's hearing before the board which must be covered. He testified, on questions by the board members, regarding his knowledge of Communist aims and methods. This testimony is somewhat extensive [fol. 209] and we quote only part of it:

“Q. * * * Is it true or is it not true that a bona fide member of the Communist party recognizes only the Communistic authority as the authority to which he owes all allegiance, is that correct?

A. That is correct.

Q. As a Communist, in other words, a Communist who may be an American citizen, but if he joins the Communist party, his loyalty and allegiance are to the heads of the Communist party in Russia, is that correct?

A. Well, I know when I was a member of the Communist party while we looked to Russia as the guiding star, still we considered ourselves American citizens and as a legal political party. Does that answer your question?

Q. Not entirely. Let's say that I belonged to the Communist party and a directive of whatever nature it may be comes from Russia or at least where I understand is the source of words of wisdom and a certain directive comes out to a true member of the Communist party—

A. That is all.

Q. —am I under obligation, if I am a Communist, to obey that directive?

A. That is law and that is probably one of the reasons why the Communist party has been so much repudiated by the American people. We've got, just like myself, there have been hundreds of thousands of people who entered the Communist party's ranks and finally end up asking ourselves questions and starting to question why, why, and then saying to heck with you.

Q. Well, to get back to this thought that the basic concept of the Communist party is that they—it recog-

nizes no nationalistic lines, that is, if you belong to the Communist party in the United States you are the same breed of cats as one who belonged to the Communist party in Argentina or whatever that may be?

A. That is correct.

Q. And the belief is that the Communist party as such should be the controlling factor in government, is that right?

[fol. 210] A. That is the aim eventually.

Q. All right now, let's say that I am a member of the Communist Party and I am residing in the United States and you are a member of the Communist party and you are residing in Mexico. Say that a war should break out in which Russia, China, whatever countries might make the alignment, would be on the one side and the United States and other countries, including Mexico, would be opposed, and the directive would come out of Russia to me here and one to you down there to do whatever we could to aid the cause of Communistic forces that were at war with, what they would classify if Russia—

A. I have no doubt they would.

Q. —would issue that directive, if I am a true Communist and that directive would be to blow up the railroad track or something I would be advised to do it, it would be my duty?

A. I said I have no doubt.

Q. All right, if I am a Communist I follow that directive, is that correct?

A. Yes."

Throughout the record of this hearing petitioner asserts that he left the Communist Party because he was disillusioned with its leaders and further that he came to the realization that it was the individual that counted, rather than the all-powerful state advocated by Communism.

There is to us a lack of credibility in petitioner's testimony as to the extent of his disillusionment with the leaders and the philosophy of Communism, for we find in one of the letters to his wife written in 1944, four years after

his break with the Party, which his attorney offered in evidence along with others to show what was in petitioner's heart during the year they were written, these assertions:

[fol. 211] " * * * The FEPC (Fair Employment Practices Commission) is one of the most important of Roosevelt's win the war agencies. It has helped to break down the reactionary barrier, that relegated Negroes to the unskilled, most dirty jobs at the lowest wages, in order to allow them to contribute their labor to increasing production for victory. Thousands of them now perform skilled labor in many industries that they never had a chance of entering before Roosevelt established the FEPC.

"White supremacy is a tool of the Southern Bourbons to continue in power at the expense of the welfare of the South itself and the nation as a whole. It is on a par with Hitler's attempt to delude the German people into believing that they are Aryan supermen.

"You yourself know intimately of the evil: Anti-Semitism. You know that the Jewish people throughout the ages have made important contributions to the cause of progress. Jim-Crow is on a par with Anti-Semitism, anti-Catholicism, *anti-Communism*. In a democracy one cannot discriminate against a minority. When one does, consciously or unconsciously they are playing Hitler's game, making use of his favorite tactic to divide us, certainly not contributing to National Unity which is so important not only for winning the war in the shortest period of time, but also for the winning of a just peace and making this world a better place to live in for all.

"All the above anti's I mentioned are most dangerous and stupid mistakes for Americans to make. They violate Christian ethics as well as all other ethical principles that recognize the brotherhood of man. To top it all off, consider them immoral." (Emphasis supplied.)

We cannot believe that the foregoing letter is the letter of a man who four years previously had battled within himself and repudiated Communism as a quest for power by a few, as he declares to have done. No doubt the intro-

duction of this letter by petitioner was inadvertent, but it tells us what was in his heart. He would still be the voice of all who would criticize Communism.

There was certainly nothing inadvertent about petitioner's membership in the Communist Party from 1934 to 1940, when he was twenty to twenty-seven years of age. [fol. 212] We agree with the Board of Bar Examiners that these are responsible years. During them his activities were largely connected with the labor movement in this country, as an organizer working out of the Communist Party. We have no reason on the record before us to credit him with a lack of knowledge of the purposes, aims and machinery of that Party in the United States.

The foundation of the Communist "theology" is laid bare in Justice Jackson's concurring opinion in *Communications Assn. v. Douds*, cited *supra*, beginning at page 422 of the U. S. report, in the following numbered statements. We omit the exposition which in the opinion follows these statements, in the interest of brevity, but commend a full reading of the entire opinion for a clear and startling picture.

"1. The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate. * * *

"2. The Communist Party alone among American parties past or present is dominated and controlled by a foreign government. * * *

"3. Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal. * * *

"4. The Communist Party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement. * * *

"5. Every member of the Communist Party is an agent to execute the Communist program. * * *

(Italics omitted.)

We believe one who has knowingly given his loyalties to such a program and belief for six or seven years during a period of responsible adulthood is a person of questionable character. We do not think it an exaggeration to say

[fol. 213] that many have doubtless been denied entry into or expelled from membership in the legal profession for far less serious offenses against ethic.

We think, also that the conclusion is warranted that petitioner has erased in his own conscience any culpability attaching to the use of aliases upon the basis he thought it necessary to hide his ancestry to secure employment. He does not today appear to us to bear the weight of this deception upon his employers and the police as a dishonesty, but simply as an excusable expedient. Furthermore, he excuses his arrests in California upon the ground that many others were arrested, too. With respect to the arrest in Detroit, for activity in violation of a federal statute, we take it that he regards his work in obtaining recruits for a foreign war as even commendable because he had concluded which side was right.

On the basis of these considerations we must approve the recommendation of the Board of Bar Examiners. This board is comprised of leaders of the legal profession in this state. One of its members is a former district judge, and another is at this time a member of the Board of Governors of the American Bar Association. They are responsible, experienced attorneys. They questioned the petitioner, heard him and observed his demeanor. At a time before the formal hearing before the board, the petitioner wrote a letter to the board asking that he be permitted to appear before this court, but, on May 21, 1954, this request was withdrawn as being premature and was never renewed.

[fol. 214] We take no pleasure in the duty we have had to perform, for no man is all good or all bad. The record on which this decision is based came from the petitioner himself, who presently enjoys good repute among his teachers, his fellow students and associates and in his synagogue. But our obligation to the bar of this state knows no compromise. Petitioner has sought an office difficult to obtain and difficult to serve. The oath required of attorneys in New Mexico, based upon sec. 18-1-9, 1953 Comp., reads as follows:

“I will support the Constitution of the United States and the Constitution of the State of New Mexico;

"I will maintain the respect due to Courts of Justice and judicial officers;

"I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as (are) consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

"I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged;

"I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice."

[fol. 215] To hold otherwise than we do, we would have to state that the petitioner has proved to us that he is a man of good moral character for the purpose of being given the office of attorney. We do not hold this conviction. Accordingly, it must be ruled that petitioner's application to take the bar examination of the State of New Mexico is denied.

It is so ordered.

(S.) James B. McGhee, Justice.

We concur: (S.) J. C. Compton, C. J., (S.) Eugene D. Lujan, J., (S.) Daniel K. Sadler, J.

(Kiker, J., to file dissenting opinion at later date.)

[fol. 216] IN SUPREME COURT OF NEW MEXICO

JUDGMENT—September 7, 1955

This cause having heretofore been argued, submitted and taken under advisement, and the Court being now sufficiently advised in the premises, announces its decision by Mr. Justice McGhee, Chief Justice Compton, Mr. Justice Lujan and Mr. Justice Sadler concurring, Mr. Justice Kiker dissenting by written opinion to be filed at a later date, sustaining the action taken by the Board of Bar Examiners of the State of New Mexico for the reasons given in the opinion of the Court on file;

Now, therefore, it is considered, ordered and adjudged by the Court that the application of the Petitioner to take the bar examination of the State of New Mexico be and the same is hereby denied.

IN SUPREME COURT OF NEW MEXICO

DISSENTING OPINION—September 30, 1955

Kiker, J., dissenting.

The applicant after being notified, according to the record, that he might take the examination and after having appeared on the date the examination was to begin was interviewed by the members of the Board of Bar Examiners and then told he would not be allowed to take the examination.

The reasons given by the Board for declining to allow the applicant to take the examination were contained in a motion which was unanimously carried:

[fol. 217] . . . for the reason that, taking into consideration the use of aliases by the applicant; his former connection with subversive organizations, and his record of arrests, he has failed to satisfy the Board as to the requisite moral character for admission to the Bar of New Mexico."

After applicant had been denied the privilege of taking the examination, he wrote a letter to the Board in which he said:

“ * * * If after you have reconsidered the question and your answer is still the same, I would appreciate being given an opportunity to appear personally before the Supreme Court when you certify the question to them.”

Later, in the month of July 1954, the applicant was given a hearing before the Board. At this hearing the applicant testified at length, this was at Albuquerque. In addition to the applicant the following witnesses testified briefly in his behalf: Mrs. Schware, applicant's wife; Rabbi Moshay P. Mann of Albuquerque, who is the Rabbi of the Congregation B'Nai Israel; Julia R. McCulloch, secretary to the dean of the law school at the University of New Mexico; and Monroe Fox, an attorney practicing at Chama. There were also seventeen letters which applicant got from students at the law school from professors present at the University when applicant was getting together testimony as to his character.

At that hearing no witnesses appeared to show want of good character on the part of applicant. The result of the hearing was that the Board of Bar Examiners affirmed the position taken by it at the time applicant applied for the examination in February 26, 1954 and so the application stood denied by the Board of Bar Examiners until the [fol. 218] opinion of the majority was filed.

The majority, in the opinion, discusses the three reasons assigned by the Board of Examiners for refusing to allow applicant to take the examination February 26, 1954, the first of these is the use of aliases beginning more than twenty years before the date of the examination and continuing from time to time over a period of approximately eight years.

When applicant was eighteen years of age, after graduating from high school, he worked for a time in a hotel at Monticello, New York. Leaving Monticello on his way into New York city, he came to a town called Gloversville where a large part of the population was Italian and where the workers at the factory were practically all Italian. He

applied for a job and adopted the name of Rudolph Di Caprio and used that name while working there. He gave two reasons for the use of this name at different times and the majority seem to think the reasons are wholly inconsistent and show a tendency to falsehood. He explained in his application that since practically all the workers were Italian he thought in order to organize a union he would be more effective using the Italian name. He was dark and could easily pass for Italian. He stated at the hearing that he used this alias at the factory for the purpose of getting a job and did get a job working with Italians at that factory.

I do not see any great inconsistency between the two statements. Being a Jew, he must have felt as he said he did, that he probably could not get a job there and he would be unable to organize a union if he did. When [fol. 219] the workers were organized into a local union, they affiliated with the A. F. of L. after which applicant left for his home in New York City and resumed use of his own name. There is no evidence to show that the A. F. of L. failed to investigate the union before taking it into its organization as an affiliate and I have never heard of the A. F. of L. being charged with being Communist or having engaged in any subversive activities.

The statement made by applicant, as shown in the majority opinion, discloses the fact that he worked in Los Angeles, San Pedro, San Francisco and Berkely, California from 1934 to 1937 and during that time he worked under the name of Rudolph Di Caprio. He explained this fact stating that at none of the places where he worked in shipyards, as longshoreman and warehouseman were any Jews employed. The employees were almost entirely Italian and so applicant used the name Di Caprio.

There is no hint or suggestion in the record made at the hearing given applicant in Albuquerque that he at any time used the name for the purpose of defrauding any person.

Applicant also used another Italian alias on the occasions of several arrests about which he told the Board of Bar Examiners. The name used was Joe Fliari or Joe Fliori. He told the Board that he made a special trip to California for the purpose of ascertaining the number of

times he was arrested at San Pedro. He stated that he was arrested twice in the course of a strike and that approximately three thousand people were arrested during the period of sixty-six days of the strike and that of these, two [fol. 220] hundred men, of whom he was one, were arrested on a charge of suspicion of criminal syndicalism. He had been working under the name of Rudolph Di Caprio before being arrested, but when arrested he gave the police the name of Joe Fiori. He stated that it had been a long time since the arrest occurred and that he supposed that the reason for using that alias was fear that the company for which he had been working might not allow him to return to work. Nobody was or could have been defrauded by the use of that name. It is not shown that applicant intended to defraud anybody by its use.

In 1940 applicant was arrested in Detroit on a charge of violation of the Neutrality Act which became Federal Law in 1818 and which was revised in 1909 and now appears as Sec. 959, Title 18 U. S. C. 1952 Ed.; since 1909 the law has not changed and was in effect in 1940 and is as follows:

“(a) Whoever, within the United States, enlists or enters himself, or hires or retains another to enlist or enter himself, or to go beyond the jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier or as a marine or seaman on board any vessel of war, letter of marque, or privateer, shall be fined not more than \$1,000 or imprisoned not more than three years, or both.”

The majority opinion quotes briefly a portion of the testimony given by applicant at the close of his examination with reference to the Detroit arrest. I quote that which precedes that quoted by the majority.

“Q. You have spoken about arrests, you testified to the arrest for criminal syndicalism twice in San Pedro, [fol. 221] California, were you ever arrested on any other occasion?

A. Yes, I was arrested in 1940.

Q. Where?

A. In Detroit, Michigan.

Q. And what was the charge?

A. Well, I have attempted to obtain a copy of the indictment and the order of release and I corresponded with an attorney in Detroit, who defended me at that particular time and so far he has not sent down the copy of the indictment or the order of release although I believe he has kept my check which I tendered to him.

Mr. White: Did you plead guilty to the indictment or not guilty?

A. I pleaded not guilty. I believe the charge was—

Mr. White: It was read to you, wasn't it?

A. I believe it was a violation of the neutrality act, it was the statute, I believe, of June 2, 1818, violation of the neutrality act.

Mr. Dunleavy: Was that as a result of attempts that you had made, and you describe in one of your letters, of obtaining recruits for the fight against Franco in Spain?

A. Yes.

Q. Were you ever brought to trial?

A. No, we were not brought to trial. Ten days after our arrest, my arrest the indictment was not pressed. I believe the Attorney General of the United States said that inasmuch as the case had not been brought to trial when it was fresh and inasmuch as the Spanish government had granted amnesty to quite a number of people who had participated, in the country itself, that there was no reason for pressing charges and I was released.

Q. Were you ever arrested again or at any other time?

A. I was arrested on one other occasion."

[fol. 222] Though the applicant used the words "I, myself, had volunteered to go to Spain" in that quotation it cannot be said he had enlisted or entered himself, or hired or retained any other to enlist or enter himself or that he at any time went beyond the jurisdiction of the United

States with intent to be enlisted or enter service of any foreign people as a soldier or other warrior. From that which is contained in the record he could not have been convicted if he had been tried on this charge as plainly appears from the wording of the statute and from the only testimony offered on this subject.

Applicant was again arrested at some town in Texas the name of which town he does not remember, while driving a car for a friend to California. According to the sole testimony on the subject he had all the papers authorizing him to take the car from Detroit to California for a friend. He had taken the southern route through Texas because it was winter time. The police held him, though he had all papers, authorizing him to have the car in possession, for two or three days then released him and returned all his possessions taken from him. No charges were ever preferred against him on that charge. The record does not show which name he used in this arrest. It does show in other testimony that applicant, after he left the Communist party in 1940, used the name which he acquired at birth, at all times; but even if he had made use of the name Joe Fiori which he did when arrested on other occasions, I think it would have made no difference, as there is positively nothing in the record to show anybody was defrauded or that it was intended by applicant by the use of an alias at any time that anybody should be defrauded or wrongfully deceived. The exact date when the Texas arrest occurred doesn't show in the Transcript of the hearing held at Albuquerque but after leaving the Communist Party in 1940 applicant got work and being in Detroit a friend arranged with him to drive his car out to California, so that the incident must have occurred in 1940.

The record does show that during at least eleven years before applying to take the examination, applicant used his own name on all occasions.

The use of an alias when it is not intended to and does not deceive another, or others, to their injury and when it does not defraud another, or others, is not unlawful.

65 C. J. S. "Names" Sec. 9a, states:

"* * * In the absence of statutory prohibition, a person, without abandoning his real name, may adopt or

assume any name, wholly or partly different from his name, by which he may become known, and by which he may transact business, execute contracts, and carry on his affairs, unless he does so in order to defraud others, * * * *

See the multitude of cases cited therein in this regard.

Some years ago, to illustrate, I was asked by a worthy New Mexico citizen who had been long in business in New Mexico and who was a well established and highly respected citizen in his community, to institute the necessary proceeding to change his name. I inquired as to what name he desired to take and he said, "the name by which you [fol. 224] have known me for a good many years". It developed that he was of Polish extraction and the name of his father was so lengthy that when he went to work for another in the business for which his training qualified him he shortened his name and had been known by the assumed name for many years. I explained to him that he might go on permanently using the name he adopted without resort to any court, but his desire to have a judgment of a court in the matter was founded on the thought that he might sometime want to make a trip to the country his parents came from and that he might have difficulty obtaining a passport under the name of his birth since he had been known so long under another name. A judgment of court was obtained according to his desire; but the statute under which the proceeding was instituted was permissive only and did not require my client so to proceed.

To further illustrate, some of the greatest people in history have been better known by an alias than by the name of their birth. Mark Twain is better known than is Samuel L. Clemens; Mr. Dooley is far better known to people of my generation than is F. Peter Dunne; O. Henry is probably better known than is William Sydney Porter; Abraham is far better known than is Abram, the original name of the same man; Paul the Apostle is far better known, I think, than Saul of Tarsus, his former name. Many of the most prominent actors and actresses who have worked in Hollywood since the establishment of the motion picture enterprise in that city have been known by names

other than the names to which they were born. No law at any time ever prevented or does now prevent a change [fol. 225] of name without fraudulent intent, as is shown by the authorities above cited.

The second reason assigned by the Board of Bar Examiners for declining to permit applicant to take the bar examination was his former connection with subversive organizations. As pointed out in the majority opinion, applicant, according to his own declaration, joined the Young Communist League in his senior year at high school. Whether that connection ended upon his graduation at the end of the school year does not appear. He joined the Communist party in 1934 and continued to be a member of that party as it then existed in this country until 1937 when he left the party. After 1937, at some date not stated, applicant joined and remained a member until 1940, when, according to his own declaration, he found the protestations of the leaders of the party as to their interest in man as an individual were false. He decided, so he declared, that the interest of the leaders was in their own welfare and so he left. This is his declaration. There is no other evidence in the record except that supplied, as to membership in the Communist party, by applicant.

The opinion of the majority points out that the Communist party was regarded in a far different manner during the time applicant was a member of it than at the present time. Applicant called the attention of the Board of Bar Examiners to the fact that in the year 1948, and years prior thereto, there was a national Communist ticket. Evidence of membership in the Communist Party at a time fourteen years and more before the application to take the [fol. 226] bar examination and with additional evidence that within that fourteen year period applicant took a solemn oath in the armed service of the United States of America to uphold and defend the Constitution and laws of this country and spent more than three years of such service as entitled him to an honorable discharge from the armed ranks, is not sufficient, in my opinion, to show want of good moral character of the applicant; and this is particularly true when it is shown that during the five years immediately preceding the date of application the appli-

cant was of good moral character, at two educational institutions he attended during that time, and in the communities where he lived, three years having been spent at the law school at the University of this state.

If the evidence in this case leaves any lingering suspicion that applicant may still in his beliefs cling to Communist theories, I think that the least that could be done about the matter of his eligibility to take the bar examination would be to bring him, with his legal representative and members of the Board of Bar Examiners, before the court for such representations as might be made as to the present activities of the applicant as to subversive matters.

The majority makes much of the writing of a letter by applicant to his wife in 1944 after applicant had been in the armed services of this country for approximately a year and while he was on his way to the South Seas to fight and die, if necessary, for his country and for those of [fol. 227] us who were unable to fight for ourselves. In that letter written to his wife applicant spoke with high praise of the Fair Employment Practices Commission and charged that white supremacy is a tool of southern bourbonism to continue in power at the expense of the south itself and the nation as a whole and said:

“Jim-Crow is on a par with Anti-Semitism, anti-Catholicism, anti-Communism. In a democracy one cannot discriminate against a minority.”

Later in the same letter applicant wrote that all the above “anti’s” are:

“* * * most dangerous and stupid mistakes for Americans to make. They violate Christian ethics as well as all other ethical principles that recognize the brotherhood of man. To top it all off, consider them immoral.”

This letter speaks only of mental attitudes and beliefs. It is not difficult for me to understand how a young man, recently married, might display an ambitious desire to appear as a great philosopher to his recently wedded sweetheart from whom he must now be separated for a time.

Though I cannot subscribe to the philosophy expounded by the writer as to some of his declarations, I think he might have been speaking of matters as he understood them to be at the time. Both Republicans and Democrats at that time were naturally opposed to the Communist party, but all recognized that it was the legally qualified exponent of its beliefs to the electorate of the United States.

I do not think this letter was inadvertently offered in evidence by applicant's attorney. It is unfortunate that death has removed the attorney for applicant and he cannot now tell us why the letter was offered in evidence; but [fol. 228] I think it was offered for the same reason applicant so freely told the members of the Board of Bar Examiners of his life's activities from the time he began working at nine years of age until he completed his educational efforts which brought him to the point of readiness to take the bar examination.

I think applicant was denied the privilege of taking the bar examination on the suspicion that he still has beliefs of Communism as it is now known to exist rather than as known to exist at the time applicant was a member of the Communist party. When applicant left the Communist party he used language quite like that used by Mr. Justice Jackson at one place in his opinion in *Communications Association v. Douds*, 339 U. S. 382. The opinion just referred to concurs in part with the majority opinion and dissents in part. The majority opinion points out certain declarations of Mr. Justice Jackson with all of which I fully agree; but in that opinion the writer was speaking as of May 8, 1950, the date of the decision, and not as of 1944.

The opinion of the majority quotes from the opinion of Mr. Justice Jackson in *Communications Association v. Douds*, *supra*, a declaration made by Mr. Justice Jackson as to what the Communist party actually is and the principles for which it stands. The case before the court and on which Mr. Justice Jackson wrote was one brought to test the constitutionality of the National Labor Relations Act as amended in 1947. The act provided that the board would not investigate any question affecting commerce con- [fol. 229] cerning representations of employees raised by a labor organization and that no such petition would be

entertained unless there be on file with the board an affidavit executed in the time stated, by the officers of such an organization that the officer is not a member of the Communist party or affiliated with such party and,

“ * * * that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.”

Having considered the Communist party and the propriety of the requirement as to membership in the Communist party, Mr. Justice Jackson wrote:

“I conclude that we cannot deny Congress power to take these measures under the Commerce Clause to require labor union officers to disclose their membership in or affiliation with the Communist Party.”

Turning to the requirement of the oath as to a belief of the officers of the union Mr. Justice Jackson wrote boldly of his belief in fundamental constitutional principles. Among other things:

“Progress generally begins in skepticism about accepted truths. Intellectual freedom means the right to re-examine much that has been long taken for granted. A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all. Our Constitution relies on our electorate's complete ideological freedom to nourish independent and responsible intelligence and preserve our democracy from that submissiveness, timidity and herd-mindedness of the masses which would foster a tyranny of mediocrity. The priceless heritage of our society is the unrestricted [fol. 230] constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from

falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored."

The next quotation we take from this opinion of Mr. Justice Jackson upon which the majority placed considerable reliance expresses in very splendid language, very clearly, the idea of which applicant in this case had formed as he stated it and which he said was his reason for leaving the Communist party. The applicant said he came to the realization that the beautiful words declared by the leaders of the Communist party showed a lack of interest in the individual and a desire for power on the part of the leaders and the leadership did not care what happened to the other people. Having so concluded he said that he finally and definitely left the Communist party. Mr. Justice Jackson states:

"The idea that a Constitution should protect individual nonconformity is essentially American and is the last thing in the world that Communists will tolerate. Nothing exceeds the bitterness of their demands for freedom for themselves in this country except the bitterness of their intolerance of freedom for others where they are in power. An exaction of some profession of belief or nonbelief is precisely what the Communists would enact—each individual must adopt the ideas that are common to the ruling group. Their whole philosophy is to minimize man as an individual and to increase the power of man acting in the mass. If any single characteristic distinguishes our democracy from Communism it is our recognition of the individual as a personality rather than as a soulless part in the jigsaw puzzle that is the collectivist state."

[It strikes me that applicant in this case at the time he [fol. 231] left the Communist party was thinking along the same straight lines, and that his rebirth to the principles of democracy is no more strange than his passing

from disbelief in God to faithful adherence to the religion of his birth.

In the opinion of the majority in *Communications Association v. Douds*, *supra*, Mr. Chief Justice Vinson wrote:

" * * * In this legislation, Congress did not restrain the activities of the Communist Party as a political organization; nor did it attempt to stifle beliefs. Compare *West Virginia State Board of Education v. Barnette*, 319 U. S. 624 (1943). Section 9 (h) touches only a relative handful of persons, leaving the great majority of persons of the identified affiliations and beliefs completely free from restraint. And it leaves those few who are affected free to maintain their affiliations and beliefs subject only to possible loss of positions which Congress has concluded are being abused to the injury of the public by members of the described groups."

The few of whom the court there spoke were officials of labor unions and they were the only members of labor unions as to whom an oath as to affiliations or beliefs was required.

The full opinion as written by Mr. Chief Justice Vinson was concurred in by three members of the court. Mr. Justice Frankfurter concurred in all portions of the opinion except that numbered 7 to which he dissented. This is not important to consider in our case.

Mr. Justice Black begins his dissenting opinion in *Communications Association v. Douds*:

"We have said that 'Freedom to think is absolute of its own nature; the most tyrannical government is powerless to control the inward workings of the mind.' "

Again Mr. Justice Black said:

"Since sec. 9(h) was passed to exclude certain beliefs from one arena of the national economy, it was quite natural to utilize the test oath as a weapon. [fol. 232] History attests the efficacy of that instrument for inflicting penalties and disabilities on obnoxious minorities. It was one of the major devices

used against the Huguenots in France, and against 'heretics' during the Spanish Inquisition. It helped English rulers identify and outlaw Catholics, Quakers, Baptists, and Congregationalists—groups considered dangerous for political as well as religious reasons. And wherever the test oath was in vogue, spies and informers found rewards far more tempting than truth. Painful awareness of the evils of thought espionage made such oaths 'an abomination to the founders of this nation,' *In re Summers*, 325 U. S. 561, 576, dissenting opinion. Whether religious, political, or both, test oaths are implacable foes of free thought. By approving their imposition, this Court has injected compromise into a field where the First Amendment forbids compromise.

"The Court assures us that today's encroachment on liberty is just a small one, that this particular statutory provision 'touches only a relative handful of persons, leaving the great majority of persons of the identified affiliations and beliefs completely free from restraint.' But not the least of the virtues of the First Amendment is its protection of each member of the smallest and most unorthodox minority. Centuries of experience testify that laws aimed at one political or religious group, however rational these laws may be in their beginnings, generate hatreds and prejudices which rapidly spread beyond control. Too often it is fear which inspires such passions, and nothing is more reckless or contagious. In the resulting hysteria, popular indignation tars with the same brush all those who have ever been associated with any member of the group under attack or who hold a view which, though supported by revered Americans as essential to democracy, has been adopted by that group for its own purposes."

The quotations are taken from both Mr. Justice Jackson and Mr. Justice Black because I understand the majority of this court to rely solely on the proposition that at one time in his life, at least fourteen years before applying for admission to the bar, applicant was a member of the Communist party.

[fol. 233] No evidence appears in the record that in the year 1954 applicant was or had been for a period of fourteen years a member of the Communist party.

In the record of the hearing held at Albuquerque this question was asked of applicant with the answer that follows:

"Q. Regardless of whether it is Malenkov or Stalin or the Twelve Apostles in charge of the Communist party, if you took that oath you cannot be a Communist, is that right?

A. I am not a Communist."

The oath referred to in the question is the oath required of any attorney being admitted to the Bar.

We quote from that record again:

"Q. Now, then, that leads me down to this question concerning yourself, you stated that you left the Communist party because of your having reached the conclusion that the aims of those in charge of the policies of the Communist party were personal advancement and what not, rather than a belief in the principles, basic principles of the Communist party. That to me still leaves a doubt in my mind as to whether or not you still believe in the basic principles of the Communist party so that if at some time, let me ask you this question, suppose that the ruler of Russia today were to be overthrown and to the eyes of the Communist, the control of the Communist party was restored to sincere Communists, those that believe in principles of Communism, that condition existed, do you still believe in those principles to the extent that you would again join the Communist party?

A. Never, never!

Q. And then you say that you are not only, while you may have left the party originally because you didn't believe that the leaders were sincere, you now say that you do not believe in the principles of Communism?

A. I am saying, Judge, that for myself I would never join the Communist party. I would never join the Communist party."

[fol. 234] In Dennis v. U. S. 341 U. S. 494, the United States Supreme Court in an opinion by Mr. Chief Justice Vinson, discussing the Smith Act, said:

"The very language of the Smith Act negates the interpretation which petitioners would have us impose on that Act. It is directed at advocacy, not discussion. Thus, the trial judge properly charged the jury that they could not convict if they found that petitioners did 'no more than pursue peaceful studies and discussions or teaching and advocacy in the realm of ideas.' He further charged that it was not unlawful 'to conduct in an American college or university a course explaining the philosophical theories set forth in the books which have been placed in evidence.' Such a charge is in strict accord with the statutory language, and illustrates the meaning to be placed on those words. Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction. Rather Congress was concerned with the very kind of activity in which the evidence showed these petitioners engaged."

Mr. Justice Frankfurter in the Dennis case, *supra*, in a concurring opinion, wrote:

"No matter how clear we may be that the defendants now before us are preparing to overthrow our Government at the propitious moment, it is self-delusion to think that we can punish them for their advocacy without adding to the risks run by local citizens who honestly believe in some of the reforms these defendants advance. It is a sobering fact that in sustaining the convictions before us we can hardly escape restriction on the interchange of ideas.

"We must not overlook the value of that interchange. Freedom of expression is the well-spring of our civilization—the civilization we seek to maintain and further by recognizing the right of Congress to put some limitation upon expression. Such are the paradoxes of life. For social development of trial and

error, the fullest possible opportunity for the free play of the human mind is an indispensable prerequisite. The history of civilization is in considerable measure [fol. 235] the displacement of error which once held sway as official truth by beliefs which in turn have yielded to other truths. Therefore the liberty of man to search for truth ought not to be fettered, no matter what orthodoxies he may challenge. Liberty of thought soon shrivels without freedom of expression. Nor can truth be pursued in an atmosphere hostile to the endeavor or under dangers which are hazarded only by heroes."

There is an appendix to the opinion of Mr. Justice Frankfurter pointing to opinions holding that speech cannot be restricted constitutionally unless there would result from it an imminent—close at hand—substantive evil.

The cases cited and quoted from illustrate the view taken by the highest court of the land as to any effort to control the thought processes of any individual. A mere belief in some proposition which is not orthodox when viewed from the standpoint of most people is not sufficient to condemn one as of bad moral character. The quotation taken from the majority opinion in *Communications Association v. Douds*, *supra*, shows clearly that it is not membership alone in a party which was condemned. The oath required by the statute was of only a few individuals in that party who were in a position of leadership and whose authority and position might enable them to lead the masses of adherents to the beliefs and doctrines of that party to forcible action against the government.

In the recent case entitled "In the Matter of Application of Ben G. Levy for Admission to Practice In the United States District Court, Southern District of Texas" the application was first considered by three District Judges. The matter involved the good moral character of applicant [fol. 236] and nothing else. Applicant was a member of the bar of the State of Texas. The charge upon his character was based on the fact that he had been associated with an attorney practicing in the courts of Texas who was generally reported to be a member of the Communist party. Applicant was denied admission to the

District Court and thereupon took an appeal to the Court of Appeals where the judgment of the lower court was affirmed. Next the matter was taken to the Supreme Court of the United States where the following opinion was rendered:

"Per Curiam: The record in this case discloses no sufficient grounds for the failure and refusal of the District Court to grant petitioner's application for admission to the bar of that Court. The judgment of the Court of Appeals is accordingly reversed with direction to remand the cause to the District Court for appropriate action in accordance with this order." (Advance Reports of the Supreme Court of the United States, Lawyers Edition, Vol. 99, No. 10, page 470, April 25, 1955.)

A very recent case involving moral character of an applicant for admission to the bar of the state of Florida is, Robert C. H. Colēman, Petitioner, v. Olin E. Watts et al., constituting the Board of Bar Examiners of the State of Florida and Guyte P. McCord, as Secretary of the Board, filed May 11, 1955, rehearing denied June 3, 1955, 81 So. 2d 650.

In that case it is shown that applicant is an attorney duly admitted to practice in the courts of Ohio. In October 1953 applicant filed an application for permission to take the bar examination. In further stating the facts the Supreme Court of Florida said:

[fol. 237] " * * * the Board presumably developed certain information concerning petitioner's moral fitness, which was derogatory in nature, and Coleman was requested to appear before the Board on March 12, 1954, for interrogation. At that time, and upon a later occasion, questions were propounded to Coleman by Board members on a wide variety of subjects, including the amounts and sources of his income for past years, and taxes paid thereon; his net worth; his past employments; his business transactions and his associates during his residence in Naples, Florida, since 1946; his personal relationship with his employer's wife at that time, and the purported receipt

of a gift of a house by deed executed by the wife containing restrictions on disposition at her option. Inquiries were also made as to whether or not the petitioner had ever engaged in "kickback" business transactions in connection with his work in real estate development at Naples, and whether or not he had served illegitimately as a "tax front" for certain business associates."

The petitioner was the only witness; all derogatory allusions or derogatory accusations were flatly denied by him. Again we quote from the opinion:

" * * * the Board members did not at any time specify, either generally or specifically, what acts of malfeasance, if any, had been reported to it of which the petitioner might be guilty. Thereafter, the petitioner was informed by the Board that his application to take the examination had been denied because 'he did not meet the requirements for admission to the Florida Bar,' but that he might avail himself of the privilege of a rehearing by producing before the Board, within a sixty-day period, 'new and additional matter which had not previously been considered.' "

After being so advised by the Board the petitioner took the matter to the Supreme Court by certiorari to secure review of the ruling of the Board. Again we quote from the opinion:

"Upon the allegations of the petition, which have been set forth here only in substance, the petitioner charged that the Board, in denying him the right to take the examination without at least informing him of the *general* nature of the complaints and charges and allowing him an opportunity to refute them, 'did not proceed according to the essential requirements of the law, exceeded and acted without jurisdiction or [fol. 238] authority in the premises, illegally and unlawfully took away (from) and denied to * * * petitioner a right granted to other members of the class of which petitioner is a member and denied petitioner the due process of law.' "

The court considered the cases found in the annotations to 28 ALR 1140 and 72 ALR 929 and discussed cases from Oregon, California, Wisconsin, Montana, Georgia, West Virginia, New York, the Court of Appeals for the District of Columbia, Indiana, and North Carolina. We now quote the principles relied on in that case for quashing the ruling of the Board of Bar Examiners and directing that a hearing be afforded applicant in conformity with the principles stated in the opinion.

"It would seem, then, either by virtue of specific holdings, or by necessary implication, in the many cases dealing with the point, that where a court is asked to review the merits of a board's rejection of an application for admission to the bar, annotations 28 A. L. R. 1140, 72 A. L. R. 929, it is incumbent upon the board to sustain its ruling by *record* evidence and not by mere assertions that it is possessed of confidential information which shows the applicant to be unfit; and if the record consists only of evidence supplied by the applicant, then such evidence must demonstrate that the board's dissatisfaction with his application rests on valid grounds and not upon mere suspicion. Although the burden is always upon the applicant to 'satisfy the Board of his or her moral standing,' we have the view that when he has made the *prima facie* showing required by the statutes and rules governing admission to practice, 'it is incumbent upon those making objections to offer evidence to support the same and to overcome the *prima facie* showing made by the applicant. It is not for the applicant to prove the falsity of the charges made against him.' While the burden of *proof* never shifts, the burden of proceeding does."

I feel confident that the record before us does not show conclusively or even persuasively that the proceedings of the Board of Bar Examiners met the tests, stated in the [fol. 239] quotation, and which are approved by the cases cited in the opinion.

Applicant in our case was denied the privilege of taking the bar examination at the time of his appearance before the Board sitting for that purpose, as he had been advised

previously that he might take the examination at that time. The board had before it certain information undisclosed to applicant which led the Board to hold an interview with him and to make certain inquiries of him of which no record was made except a record of a motion carried unanimously by the Board to the effect that applicant be denied the privilege of taking the bar examination because of subversive activities, aliases and arrests. He was not then advised, as I understand, of any reason for the questions which were asked him and he was not told the substance, even, of anything contained in the "Confidential File". At the hearing held in Albuquerque the applicant by his attorney asked for information as to the contents of the "Confidential File" held by the Board. He was informed that he could not have that and the hearing proceeded so far as anything against the applicant is concerned upon his statements only. There is a statement made by the Bar Examiners which is before the court that the Board did not rely upon the confidential information in reaching its decision but based the decision upon the statements by the applicant. As said above the applicant was denied the privilege of taking the examination when he appeared for that purpose. The result of the hearing at Albuquerque [fol. 240] was the affirmation of its previous action in refusing to permit the applicant to take the examination. In this court applicant has complained of the failure to allow him to know about the reports in the "Confidential File".

There is one other reliance for its action by the Board in its denial to the applicant of the privilege of taking the bar examination and that is the arrests of the applicant.

It is true applicant was arrested several times, but he was never tried or convicted for anything. He has no criminal record and it has been many years since he was last arrested.

If one were on trial for a criminal action mere arrests without convictions could not be shown for any purpose. For impeachment a defendant may be asked if he ever has been convicted of a misdemeanor or a felony. The details of the proceedings leading to a conviction are not admissible as evidence. It seems to be a fact that applicant disclosed the fact of his arrests in explaining the use of an

alias at different times. Since the record does not show any evidence of a fraudulent purpose in the use of an alias, bad moral character can not be established thereby. Just as a consideration of aliases is wrong in the absence of a showing of fraudulent intent, so is the consideration of arrests many years ago when there were no charges filed in some instances and no convictions ever. The good moral character of an individual may be attacked if put in issue by proof of his general reputation in the community for any damaging trait. It is not to be established by specific [fol. 241] instances of what may be, or may be thought to be, wrongful acts. Proof of a general reputation of bad character at a remote time is not admissible.

There is nothing in the record to show want of good moral character since January 1943. There is little if anything in the record other than applicant's beliefs, to show bad moral character at any time. There is only one act of applicant's life which suggests criminal conduct and that was when he was soliciting others to go to Spain with him and to there enter the Loyalist Army of that country. Applicant said he did not know the statute was in existence at the time he was asking others to go with him to Spain to enlist. It is not surprising that he did not know of the statute. There are many of us all over this country to whose attention that statute had not been called until necessity for its consideration arose.

I have referred above to the "Confidential File". It is pointed out in the majority opinion in this case that I am the only member of the court who has read the "Confidential File". In this connection I feel justified in saying that by assignment this case first came to me for writing an opinion. On beginning to study the case I undertook to read and did read every paper in the files, including the "Confidential File". I not only read the instruments once, I have read all of them, including the "Confidential File", several times. The result of my studies at that time led me to prepare a memorandum suggesting that this court call before it the applicant with his attorney [fols. 242-294] and the members of the Board of Bar Examiners for further consideration of the matter. The

other members of this court did not agree with me but concurred in the opinion to which I now dissent.

I think applicant was entitled to know at least the substance of any derogatory information given to the Board of Bar Examiners in the "Confidential File". I think every member of this Court owes it to the applicant, on review here of the action of the Board of Bar Examiners, to know the contents of the "Confidential File".

I do not believe that the applicant has been accorded the rights of freedom guaranteed him by the Federal Constitution or by the State Constitution or that he has had due process, by the proceedings had.

That which I have said in this opinion is in no way a criticism of any member of the Board of Bar Examiners or of that Board. All men make mistakes. I know the members of this Board individually and am sure that no member of the Board would consciously or intentionally do any applicant a wrong. I appreciate also the sacrifices of time and effort which the examiners must make in order to hold the examinations and pass upon the eligibility of applicants for admission. In this case, however, I think an error has been made and that it should be corrected by an order of this court directing the Board of Bar Examiners to permit applicant to take the bar examination.

For the reasons above stated, I dissent.

(S.) H. A. Kiker, Justice.

[fol. 295] SUPREME COURT OF NEW MEXICO

OPINION ON MOTION FOR REHEARING—December 19, 1955
McGhee, J.

Petitioner in his motion for rehearing is chiefly dissatisfied with the type of hearing he was given in this court, asserting the court should have ordered a personal hearing before it and requesting now that such hearing be given. As stated in our opinion, a request for personal

hearing was made by petitioner, but this request was withdrawn as being premature by letter of May 21, 1954. No further request for hearing was made and the case was presented to us, briefed and orally argued, all with reference to the record of hearing before the Board of Bar Examiners held July 16, 1954. The question presented to us was whether applicant had established his good moral character so as to entitle him to take the examination for membership in the bar in this state. Petitioner was given precisely the hearing before this court which he sought.

Petitioner is also dissatisfied because we did not rule [fol. 296] whether former membership in the Communist Party alone establishes a lack or absence of good moral character. The answer to this is the question was not and is not now before us. We stated in our opinion and we reiterate here:

“We believe one who has knowingly given his loyalties to such a program and belief for six to seven years during a period of responsible adulthood is a person of questionable character.”

This conduct of petitioner, together with his other former actions in the use of aliases and record of arrests, and his present attitude toward those matters, were the considerations upon which application was denied.

In connection with the matter of the arrest in Detroit, Michigan, for violation of the Neutrality Act, we take this opportunity to dispel some doubt which may have arisen about the events leading thereto and the appropriateness of criminal prosecution under c. 321, s. 10 (1909), 35 Stat. 1089 (substantially the same as the present s. 959 (a), Title 18, U. S. C. A.)

Said s. 10 provides.

“Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on

board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars and imprisoned not more than three years."

Mr. Justice Kiker in his dissent filed herein has asserted that petitioner's activities were not such that he could have been convicted under the statute. Either Mr. Justice Kiker has construed the statute in a manner at odds with the [fol. 297] authorities (Gayon v. McCarthy, 252 U. S. 171, 40 S. Ct. 244, 64 L. Ed. 513 (1920); United States v. Blair-Murdock Co. (D. C. Cal., 1915) 228 Fed. 75, (rev'd on other grounds, (C. C. A. 9th, 1917) 241 Fed. 217, cert. den., 244 U. S. 655, 37 S. Ct. 742, 61 L. Ed. 1374 (1917), which interpret the words "hire or retain" as meaning "engage" in the clause reading, "Whoever * * * hires or retains another person to enlist or enter himself," and the word "himself" in this connection refers to its antecedent "another person."); or he has ignored the following portions of letters from petitioner to his wife, introduced in evidence as exhibits. From the letter of May 9, 1944, we read:

"* * * The question of my enlisting to fight on the side of the Spanish Republicans against, Franco, Hitler & Mussolini. Was in Detroit at the time. In my position as Secretary of the Wayne County Workers Alliance and also as Chairman of the Single Men's Unemployed League (more on this organization later) was very strategically placed for getting recruits to go across.

"And much as I hated it, because I was doing such a good job they kept on putting off and off my own date of departure. Finally put my feet down and insisted I be allowed to go. By this time it was getting toward the end. Finances were low. Arrived in New York with two auto workers. Were given a weeks vacation.

"The boys were now going across without passports and stowing away on ships going to France. 'Twas a beautiful system elaborately worked out and couldn't have been successful if the crews weren't overwhelmingly sympathetic to the cause.

"Remember now as if it had just happened. There were 5 of us. Two from San Francisco, us three from

Detroit. One morning the S. F. boys left and came back the next day. They had gotten caught. Were unfamiliar with ships. That afternoon the announcement, 'We will only be able to send four. One of you will have to go back home.'

[fol. 298] "A simple problem in arithmetic and finances. Cost less to send one person back to Detroit than San Francisco. The choice was left to us as to which one goes back. The 3 of us flipped coins. Two tails and one head fell. I had flipped a head. Given a bus ticket back to Detroit. Cursing my hard luck went back and resumed where I had left off. Thus ends a tale of how not to get to Spain. Incidentally of the last four who left, only one of the Detroit boys lived to come back."

In a letter written May 13, 1944, petitioner described a friendship he had developed with a man named Pete Kowal in Detroit, and stated:

"In mentioning Spain said that soon I would be going across, that someone would be needed to take my place, that despite his lack of experience, thru diligent study he was capable of being that person, that it meant hard work, something he was used to, and besides wherever he went he would run into the same conditions as existed in Detroit.

"He joined the party and decided to stick it out. From that nite we were inseparable. * * *

"* * * The next week the secretary we had wasn't doing so hot, ousted him and Pete elected in his place.

"Pete helped me with recruiting too. As a result he was arrested with me by the FBI on February 6, 1940. Became a member of an exclusive club, the 59ers. All our prison numbers I believe started with 59."

Petitioner is also distressed over the fact the Board of Bar Examiners had access to certain confidential information already noted in our opinion and the fact the content of the file was not made known to him. As stated in our opinion, its author and the justices concurring therein at no time examined the content of this file. The sworn

response of the Board of Bar Examiners to the original petition herein declared its recommendation was not based upon confidential information, but upon facts disclosed by [fol. 299] petitioner himself. Petitioner is now merely seeking to read some prejudice to himself into the proceedings where there is none in fact.

No answer can now be made to petitioner's request he be advised as to whether he will be permitted to take the bar examination at some future date. The answer to such a request will depend upon the showing then made and how it may be viewed by the Court.

Other matters argued upon the motion for rehearing are found to be without merit. The motion for rehearing is hereby denied. It Is So Ordered.

(S.) James B. McGhee, Justice.

We Concur: (S.) J. C. Compton, C. J., (S.) Eugene D. Lujan, J., (S.) Daniel K. Sadler, J.

KIKER, J., dissenting.

The majority opinion, as I read it, permanently disqualifies the applicant from taking the bar examination. The language which I so interpret is quoted in the opinion on the Motion for Rehearing and is as follows:

"We believe one who has knowingly given his loyalties to such a program and belief for six or seven years during a period of responsible adulthood, is a person of questionable character."

[fol. 300] If now, after fifteen years of unobjectionable conduct, three years of which were spent as a soldier in the service of the United States of America overseas, the applicant is a man of questionable character, then for him there can be no hope. If a man who became a member of a junior affiliate of the Communist party at the age of eighteen and later moved into the Communist party, until he was twenty-six years of age, when he permanently separated from that party, is now of questionable character, even though during all of the years just mentioned the Communist party was recognized as much within the law

as was the Republican party or the Democratic party, then it must be true that the individual will never be able to establish a character among his fellows which could justify his association with respectable people or his admission to any of the learned professions.

It is difficult for me to understand how the majority can seriously argue that the use of aliases, without intent to do harm to any individual or group of individuals, could so besmirch a man's character that he will be forever unfit for association with the respectable part of any community. It is, moreover, difficult for me to appreciate how the majority arrives at its conclusion that any number of arrests without a conviction of any offense whatever can forever condemn a man as one of questionable character.

In the discussion in the majority opinion of the arrest of the applicant at Detroit, Michigan, in 1940 for violation of the Neutrality Act, my name is used again, and it is suggested that I have entirely overlooked pertinent authorities or that I have failed to read certain letters writ-[fol. 301] ten by the applicant in the year 1944 when he had taken the oath required of all soldiers and was enlisted in the service of our country. These letters do no more than expose to applicant's wife, five years after he had severed all connections with the then lawful Communist party, some of his activities in that party. In the majority opinion two cases are cited as instances of authorities which I may have overlooked in expressing my dissent to the original opinion of the majority in this case.

The first of these cases is *Gayon v. McCarthy*, 252 U. S. 171, 40 S. Ct. 244, 64 L. Ed. 513 (1920). In that case the appellant, Gayon, was indicted in the Southern District of Texas for conspiring with one Naranjo of San Antonio, Texas, and of one Mendoza of Laredo, Texas, to hire and retain Foster Averitt, a citizen of the United States, to go to Mexico, there to enlist in the military forces organized in the interest of Felix Diaz then in revolt against the government of Mexico, with which the United States was at peace, in violation of what is called the Neutrality Act.

Gayon was arrested in New York and was held by a commissioner, subject to order of the District Court for his removal to Texas. Next, by petition for writs of habeas

corpus and certiorari the case was removed to the District Court for the Southern District of New York; and there the Court discharged the writ of habeas corpus and entered an order and warrant issued for the removal of the appellant to Texas. The appeal was taken to the Supreme Court of the United States.

The Supreme Court said:

[fol. 302] "If there was before the Commissioner or District Court evidence showing probable cause for believing defendant guilty of having conspired with Naranjo or Mendoza, when he was in the Southern District of Texas, to hire or retain Averitt to go to Mexico to enlist in the insurgent forces operating under General Diaz against the Mexican government, the order of the District Court must be affirmed."

The Court examined the evidence. That before the commissioner was merely the indictment against the defendants and the admission by Gayon that he was the person named therein. The Court held that this established a *prima facie* case.

Thereupon, the testimony of the accused and of one Del Villar was offered by appellant and that of Averitt by the government. This evidence showed that Del Villar, a political exile from Mexico, had maintained offices in New York, from which he had conducted a systematic propaganda in the interest of Felix Diaz and against the Mexican government; that Gayon was a Mexican citizen and throughout several administrations prior to that of Carranza had served as consul for the Mexican government at several places within and without the United States, one of these being at Roma, Texas. For about two years Gayon had been in the service and pay of Del Villar and General Aurelio Blanquet, the latter being in Mexico with the forces of Diaz. Naranjo was editor and publisher of "Revista Mexicana", a newspaper at San Antonio, Texas, the paper being opposed to the established Mexican government and favorable to Diaz and his interests.

There was much correspondence between Gayon from New York to Naranjo at San Antonio. The correspondence disclosed that Gayon, although in New York, was in close

[fol. 303] association with Naranjo and that the two were engaged actively in promoting opposition to the established Mexican government. In January, 1919 Foster Averitt, an American citizen living in Texas, called at the office of Gayon. Averitt had recently resigned from the United States Naval Academy and was without employment. His purpose in calling on Gayon was to secure, if possible a position in Mexico or Central America as an engineer. Among other things, he expressed his desire to see Generals Diaz and Blanquet personally. He asked for letters of introduction to these men. Gayon refused until he could confer with Del Villar. Averitt called again and discussed with Gayon conditions in Mexico near the border and the means of his going to Mexico and later received from Gayon two letters, one addressed to each of the generals above named. Gayon asked General Blanquet to supply Averitt with necessary information to enable him to make his trip into Mexico. He also asked that Averitt be introduced to General Diaz. In the letter he also requested the general to write as often as possible to enable "us to continue our campaign of propaganda". Having received these letters, Averitt went immediately to San Antonio where he presented the letter to Naranjo who gave him a letter to General Mendoza at Laredo. This letter was presented to Mendoza and through him arrangements were made for Averitt's crossing into Mexico with two or three others, but they were arrested by customs guards and the proceedings followed.

In the interviews had in New York there was suggestion of payment of expenses and a commission for Averitt, [fol. 304] but Gayon said that the furnishing of either would violate the neutrality laws of the United States, but that there would be no difficulty in his getting a commission from General Blanquet on his arrival in Mexico and also said "that he expected that he should be at least a colonel when he saw him again down there". Gayon also said to Averitt that it might be possible to have his expenses made up to him when he arrived in Mexico, and, as a matter of fact, he received \$15 from General Mendoza at Laredo.

As said above, the charge was conspiracy and the overt

acts stated in the indictment were that Gayon delivered to Averitt in New York a letter addressed to Naranjo with instructions with respect to presenting it, and impliedly promised Averitt that upon his arrival in Mexico he would be given a commission in the army of General Blanquet and he also gave Averitt a letter to General Blanquet who was then in Mexico in command of revolutionary forces; that Averitt visited and held conferences with Naranjo who gave him a letter to Mendoza at Laredo in the southern district of Texas; and that Averitt called upon Mendoza and arrangements were made for him to enter Mexico with the intent to join the forces of Diaz under General Blanquet. The court says that it is evident that Gayon entered into the engagement by the promise that he would be given a commission in the forces of Diaz when he arrived there and that he would probably be reimbursed for his expenses.

This case was not concerned with the guilt of Gayon. The [fol. 305] question was whether he should be removed to the southern district of Texas and the Court held that there was a case against him to be tried in the southern district of Texas. Instead of undertaking to quote a few words from the opinion out of the context for the purpose of explaining the meaning of the words "hire" or "retain", I quote from the opinion following:

"The word 'retain' is used in the statute as an alternative to 'hire,' and means something different from the usual employment with payment in money. One may be retained, in the sense of engaged, to render a service as effectively by a verbal as by a written promise, by a prospect for advancement or payment in the future as by the immediate payment of cash."

The second of the cases cited in the majority opinion is *Blair et al. v. U. S.*, 241 Fed. 217, Cert. den., 244 U. S. 655, 37 S. Ct. 742, 61 L. Ed. 1347.

In this case, plaintiffs in error to the Circuit Court of Appeals, 9th Circuit, were charged by indictments in the District Court with conspiracy to violate the Neutrality Act.

The case was presented upon an agreed statement of

facts and the trial court literally instructed the jury to return a verdict of guilty against the defendants. The Circuit Court reversed the judgment of the lower court and remanded the case for a new trial. From the opinion I quote:

"It will be readily see, not only from the stipulation itself, but from the foregoing declaration contained in the bill of exceptions, that there was no agreement between the parties in regard to any inference or deduction to be drawn from the actual facts agreed on. Obviously, all such inferences and deductions were left to be drawn, and only could be properly drawn, by the jury upon submission of the case to them, after opportunity of argument by the counsel of [fol. 306] the respective parties. It might have been, and doubtless would have been, argued to the jury, as it is argued here to this court, that the agreed statement of facts wholly fails to show that the present plaintiffs in error, or, indeed, any of the defendants to the indictment ever within the territory of the United States, conspired to 'hire or retain,' or ever did 'hire or retain,' any of the persons named in the indictment, or any other person or persons, to go beyond the limits and jurisdiction of the United States with the intent or purpose specified in the indictments. The defendants thereto might well have contended before the jury, as the plaintiffs in error do here, that what they did, as shown by the agreed statement of facts, was in effect to aid and assist the persons referred to in the indictment and in the agreed statement of facts to go beyond the limits of the United States with the intent and for the purpose charged, and was in no respect the hiring and retaining them prohibited by the statute."

There is certainly nothing in either of the cases which causes me to change my opinion as to the possibility of a conviction of the applicant in the case now before this Court if he had been tried following his arrest at Detroit. I think the prosecuting attorneys, including, as the record in this case shows, the Attorney General of the United

States, were aware of the situation and of the evidence which could be adduced. After about ten days following the arrest, applicant was released and, as shown by the record, the case was never thereafter called to trial and, as pointed out in the majority opinion, was dismissed.

After diligent search, I have been unable to find anything which convinces me that the applicant, Mr. Schware, could have *been* convicted if there had been a trial following his arrest. The record before us does not show that anything was paid by the applicant to anybody else or that the applicant made any promise of anything to any other [fol. 307] person by way of compensation or reward to be paid in the future. Somebody advanced some money to the four men who wanted to go overseas while they were in New York, but that certainly was not Schware. When it was found that the four men could not stow away and reach Spain, and that only three could go, the one who must return home was selected by tossing coins and the applicant was the one who must return home. Somebody gave them the money to pay for his transportation and he returned.

The record shows nothing in the indictment as to its contents. The record names no individual who was hired or retained or engaged, or whom the applicant sought to hire or retain or engage. It is not shown by the record before us that applicant ever succeeded in causing anybody to enlist or enter himself in the United States, in the service of a foreign country.

Evidently, the four who reached New York were acting in concert, one as anxious to get over to Spain as the other.

I have previously read the letters set out in the latest majority opinion and find nothing to change my mind as to this case. Both letters, set out in part in the latest majority opinion, were written in 1944, at a time when the applicant was a soldier in the service of his country. Each of these letters speaks of that which occurred in or prior to the year 1940.

In the majority opinion it is again asserted that neither the author nor any of the justices concurring have at any time examined the file of what is called "Confidential Information." It is also again declared that the Board of Bar Examiners has stated that the recommendation to the

[fol. 308] court was not based on confidential information, but upon facts disclosed by petitioner himself. In the majority opinion this is found with reference to the confidential information: "Petitioner is now merely seeking to read some prejudice to himself into the proceedings where there is none in fact." It must be assumed, I think, that the Board of Bar Examiners, having notified the applicant that he could take the examination on a certain day, undertook for some reason upon his appearance on that date for the purpose of examination, to call him before the Board and interrogate him. Just what the interrogation was about at that time and to what extent it went and just what answers Mr. Schware made does not appear. What was that reason? Could it have been on account of the substance of that which is called "Confidential Information"? The application of Mr. Schware had been in the hands of the Clerk of the Board for a considerable length of time. There must have been some reason for Mr. Schware's interrogation at that time and his being denied the right to then take the examination. As I understand this situation, applicant is now denied the right to take the bar examination because of the hearing in Albuquerque.

That matter has been sufficiently discussed, I think. I am now strengthened in my belief that it is not only the right but the duty of the members of this court to know everything, including the "Confidential Information" placed before the Board of Bar Examiners.

I quote from the majority opinion overruling applicant's motion for rehearing:

"No answer can now be made to petitioner's request [fol. 309] he be advised as to whether he will be permitted to take the bar examination at some future date. The answer to such a request will depend upon the showing then made and how it may be viewed by the Court."

To me this statement is indeed strange. Bearing in mind that since 1940 the applicant has lived a life with which no fault has been found and as far as the record shows, no fault can be found; remembering also that during this fifteen year period applicant has served a period

of three years in the U. S. Army, being there required if need be to lay down his life for those of us who are either too old or too infirm to go into the armed services in defense of our country and that he so served that he received an honorable discharge; and remembering that thereafter he proceeded from his high school accomplishments to acquire such education as qualified him to take the Bar Examination in our state except for a character showing, I inquire if fifteen years of blameless life is not long enough to establish his good character, how long will it take?

Remembering the applicant is now forty-one years of age and desires to enter, at that late time, upon the practice of law, if another fifteen years of life with no wrong doing shall pass, will applicant then be of such character as to enable him to take the bar examination? Assuming the applicant will in the future live a blameless life there can be no record before the Board of Bar Examiners at any future date which will differ in any material respect from that placed before the Board and this court.

It will always be a fact that in his youth and to 1940 applicant was affiliated with the then Communist party at a time when membership in that party cast no stigma on [fol. 310] any individual.

It will always be a fact that applicant, on several occasions, before his father's death made use of an alias.

It will always appear that the applicant, in his youth, was arrested several times but never tried or convicted for any offense.

Under the majority holding, there can be no change of circumstances justifying permission to applicant to take the bar examination at any time in the future if he continues to live a life without misconduct.

The view taken of the present situation by the majority should lead to answering the applicant's question as to whether he will ever be allowed to take the Bar Examination plainly and positively—No. No other logical result can ever follow the order of the majority than the refusal of an examination to the applicant any and every time he may apply. Should Mr. Schware apply to take the bar examination in any other state or states he would have to disclose this fact.

I deeply regret that the Communist party was ever organized in the United States of America, but I would not condemn and leave helpless those who forsook the error of their ways and have for many years lived the kind of life by other people who are considered worthy citizens.

For the reasons expressed, I dissent.

(S.) H. A. Kiker, Justice.

[fols. 311-312]

SUPREME COURT OF
NEW MEXICO

ORDER DENYING MOTION FOR REHEARING—December 19, 1955

This cause coming on before the Court on motion of Petitioner for rehearing, and the Court having considered said motion and briefs of counsel and being sufficiently advised in the premises announces its decision by Mr. Justice McGhee, Chief Justice Compton, Mr. Justice Lujan and Mrs. Justice Sadler concurring, Mr. Justice Kiker dissenting, denying the motion for rehearing for the reasons given in the opinion of the Court on file;

Now, therefore, it is considered, ordered and adjudged by the Court that the motion for rehearing be and the same is hereby denied.

[fol. 313] (Clerk's certificate to foregoing transcript omitted in printing.)

[fol. 314] SUPREME COURT OF THE UNITED STATES,
October Term, 1955

No. —

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF
CERTIORARI—March 16, 1956

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause, be and the same is hereby, extended to and including May 17th, 1956.

Tom C. Clark, Associate Justice of the Supreme Court of the United States.

Dated this 16th day of March, 1956.

[fol. 315] SUPREME COURT OF THE UNITED STATES,

October Term, 1956

No. 92

RUDOLPH SCHWARE, Petitioner

vs.

BOARD OF BAR EXAMINERS OF THE STATE OF NEW MEXICO

ORDER ALLOWING CERTIORARI—Filed October 8, 1956

The petition herein for a writ of certiorari to the Supreme Court of the State of New Mexico is granted, and the case is assigned for argument immediately following No. 5. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2225-1)